



**Sud Bosne i Hercegovine
Суд Босне и Херцеговине**

Case No.: S1 1 K 005589 11 Kžk (Reference to: X-KRŽ-05/59)

Date of publication: 11 July 2011

**Before the Trial Panel comprised of: Senadin Begtašević, Presiding Judge
Dragomir Vukoje, Judge
Phillip Weiner, Judge**

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

RADOJE LALOVIĆ AND SONIBOJ ŠKILJEVIĆ

VERDICT OF THE APPELLATE PANEL

Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:

Behaija Krnjić

Counsel for the Accused Radoje Lalović:

Attorney Slaviša Prodanović

Counsel for the Accused Soniboj Škiljević:

Attorney Milorad Rašević

Number: S1 1 K 005589 11 Kžk (Reference to X-KRŽ-05/59)

Sarajevo, 5 July 2011

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, the Panel of the Appellate Division comprised of Judges Senadin Begtašević, as the President of the Panel, and judges Dragomir Vukoje and Phillip Weiner, as members of the Panel, with the participation of Legal Officer Nevena Aličehajić as the record-taker, in the criminal case against the Accused Radoje Lalović and Soniboj Škiljević, for the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), as read with subparagraphs a), c), e), f) and k) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), all in conjunction with Article 180(1) and Article 29 of the CC of BiH, upon the amended Indictment of the BiH Prosecutor's Office number KT-RZ-33/05 dated 2 June 2011, having held the main trial before the Panel of the Appellate Division with the public partially excluded, in the presence of the Prosecutor of the BiH Prosecutor's Office Behajja Krnjić, the Accused Radoje Lalović and his Defense Counsel, Attorney Slaviša Prodanović, and the Accused Soniboj Škiljević and his Defense Counsel, Attorney Milorad Rašević, upon deliberation and voting, on 5 July 2011 rendered and on 11 July 2011 publicly announced the following:

V E R D I C T

The Accused:

- 1. Radoje Lalović aka *Ratko***, son of Ljubo and Vida, née Zelović, born on 15 July 1946 in Kalinovik, with permanent residence in Bijeljina, 1b Đure Jakšića Street, Serb, BiH citizen, personal identification number (JMBG) 1507946171507, pensioner, literate, completed the two-year post-secondary school for social workers, married, father of two adult children, served the army in 1969/70 in Kruševac, Republic of Serbia, not registered in the military records, no medals, average financial standing, no prior convictions, no other ongoing criminal proceedings against him, released pending trial
- 2. Soniboj Škiljević, aka *Soni***, son of Vojin and Mileva, née Andrijašević, born on 14 August 1948 in Izgori, Gacko Municipality, with permanent residence in Istočna Ilidža, 21 Ravnogorska Street, Serb, BiH citizen, personal identification number (JMBG)

1408948171514, pensioner, literate, completed the faculty of political sciences, married, father of two adult children, served the army in 1974/75 in Zagreb, Republic of Croatia, and Belgrade, Republic of Serbia, holds a non-commissioned officer rank, not registered in the military records, no medals, poor financial standing, no prior convictions, no other ongoing criminal proceedings against him, released pending trial

Pursuant to Article 284(c) of the CPC of BiH

ARE ACQUITTED OF CHARGES

That,

Radoje Lalović and Soniboj Škiljević together:

From early May until 16 December 1992, as part of a widespread and systematic attack carried out by the military and police as well as paramilitary forces of the so-called Serb Republic of BiH, and subsequently the Republika Srpska, directed against the non-Serb civilians of the City of Sarajevo, aware of that attack and that their acts constituted part of that attack, Radoje Lalović, in his capacity as Warden, and Soniboj Škiljević, in his capacity as Deputy Warden of the Correctional Institution (KPD) *Butmir* in Kula, Ilidža Municipality, which mostly functioned as a detention camp, knowingly and willingly participated in a joint criminal enterprise, aware of the existence of an organized system of ill-treatment of the non-Serb detainees detained in the mentioned KPD and the commission of crimes against them, sharing the same goal with the responsible persons from the Ministry of Justice of the so-called Serb Republic of BiH, and subsequently Republika Srpska, the staff performing guard duties in that correctional organization, including the guards Neđo Pandurević, Vule Govedarica, Božo Radović and other prison staff, members of the Army of the so-called Serb Republic of BiH (subsequently Republika Srpska), in particular members of the Security Service of the Sarajevo-Romanija Corps, members of the civilian and military police, Serb territorial defense and paramilitary formations, which implied persecution of non-Serb civilians on political, national, ethnic and religious grounds, based on discriminatory intent, within which they ordered, perpetrated and incited the implementation of a common plan,

according to which, in violation of the rules of international law, severe deprivations of physical liberty and imprisonment of non-Serb civilians in inhumane conditions were carried out, followed by intentional deprivations of life (murders), inhuman treatment, violation of bodily integrity and health, torture and forced labor, and, as superiors and responsible persons, they knowingly failed to take the necessary and reasonable measures to prevent the perpetration of the mentioned acts or punish the perpetrators thereof, in the way that:

1. By virtue of their offices, Radoje Lalović and Soniboj Škiljević were responsible for **the functioning of the Correctional Institution *Butmir* in Ilidža** from early May until 16 December 1992, which in addition to its primary purpose also functioned as a detention camp during the mentioned period, where they had and exercised effective control over the work and behavior of all the guards who performed guard duties in the camp, and holding these offices, they maintained daily contacts with the political, military and police authorities outside the camp and thus, in violation of the fundamental rules of international law, they participated in severe deprivation of physical liberty and imprisonment of hundreds of non-Serb civilians, particularly Bosniacs, without any statutory ground in the way that, with their knowledge and consent, the camp guards took over these persons from military and police who brought them in, while they not seldom attended the takeover themselves, and then they placed them on the camp premises where they were detained and guarded by the camp guards for different periods of time, and during their detention these persons were never informed of the reason for their detention and no proceeding was conducted against them, and then:

1.(a) by direct participation and with the knowledge and consent from Radoje Lalović and Soniboj Škiljević, who, although they had the powers to change the detention conditions, determine the detainees' daily regime and grant them more freedom and rights in the camp, including reasonable living conditions and hygiene standards, while supervising the detention conditions, did not exercise these powers at all or exercised them insufficiently, during the mentioned period the detainees were imprisoned and placed in inhumane conditions in the way that they stayed in rooms with inadequate conditions which had no heating during winter and which were frequently overcrowded, they had no possibility to satisfy their basic hygienic needs, they were starved by being given

very meager daily meals, as a result of which many of them lost weight, and they were deprived of medical aid, due to which the health of some of them deteriorated, and thus, as a consequence of untimely administered medical aid, **Izet (son of Malaga) Ramić**, born in 1956, died during the mentioned period,

- 1.(b)** with a significant contribution by Radoje Lalović and Soniboj Škiljević, who knew or at least had reason to know that their subordinates or other persons, mostly members of military and paramilitaries, by taking the detainees out of the camp, were making preparations, were able and wanted to murder them, and still took no action to prevent these persons from doing what they intended to, although they could have done so, instead, with their consent or tacit agreement, they enabled them to take the detainees out of the camp and then take them to unknown locations where they intentionally murdered them, and in this way the following persons were taken out of the prison on an undetermined date in May 1992 and killed at an unknown location: **Alija (son of Suljo) Durić**, born on 13 May 1935, **Samir (son of Alija) Durić**, born on 24 October 1968, **Suvad (son of Alija) Durić**, born on 4 December 1962, **Seid (son of Hasan) Dević**, born on 16 April 1946, **Besim (son of Seid) Dević**, born on 13 September 1970, **Bislim (son of Hašim) Gaši**, born on 30 April 1941, **Mahmut (son of Avdo) Čatović**, born on 11 January 1946, **Haris (son of Hamza) Kikić**, born on 11 June 1971, **Salih (son of Hajro) Bihorac**, born in 1940, **Dervo (son of Hajro) Bihorac**, born in 1957, **Hasan (son of Zijad) Džanić**, born on 20 January 1953, **Elmaz (son of Hamid) Džanković**, born on 19 May 1936, **Rifat (son of Elmaz) Džanković**, born on 6 October 1971, **Šećet (son of Elmaz) Džanković**, born on 7 March 1963, **Mujo (son of Hamid) Džindo**, born in 1937, **Huso (son of Redžo) Gačević**, born in 1959, **Šemso (son of Redžep) Gačević**, born on 5 September 1950, **Zuvdija (son of Redžep) Gačević**, born in 1968, **Emir (son of Zildžo) Hajdarević**, born on 9 March 1973, **Zildžo (son of Abdulah) Hajdarević**, born on 5 November 1948, **Rušid (son of Ibro) Kovač**, born on 28 March 1956, **Emin (son of Mehmed) Kulo**, born on 24 April 1934, **Hasan (son of Mehmed) Kulo**, born on 10 April 1936, **Ervan (son of Latif) Martinović**, born on 9 June 1966, **Elmaz (son of Ramiz) Mulić**, born on 11 January 1962, **Sabahudin (son of Redžep) Mulić**, born on 23 June 1957, **Ujkan (son of Redžep) Mulić**, born on 2 January 1953, **Džafer (son of Ibrahim) Turković**, born on 21 February 1956, **Husejin (son of Jusuf) Turković**,

born on 7 August 1953, **Kasim (son of Jusuf) Turković**, born on 5 February 1958, **Emin (son of Hamza) Katica**, born on 1 June 1954, **Ibrahim (son of Cano) Rastoder**, born on 5 November 1939, **Rahman (son of Cano) Rastoder**, born on 18 October 1933, **Husein (son of Smajo) Ramović**, born on 13 July 1954, **Sabid (son of Ćamil) Selimović**, born on 24 January 1951, **Nail (son of Alija) Maksumić**, born on 27 September 1948, **Feho (son of Rašid) Erović**, born on 28 November 1956, and **Habib (son of Rasim) Medović**, born on 23 June 1968, after which they took no action to report the perpetrators of these murders,

- 1.(c) with the knowledge, consent and assistance by Radoje Lalović and Soniboj Škiljević, who significantly contributed to and furthered the functioning of the camp system of ill-treatment, the guards took the detainees out of the rooms in which they were detained and physically ill-treated them, or they took them to the rooms where they were interrogated by police operatives or military and then also ill-treated, and thus the detainees were subjected to intentional infliction of severe physical and mental pain in the way that they were physically ill-treated by the guards and other persons, police and military, whereby many of them sustained bodily injuries, and thus the following persons were beaten and abused during the mentioned period: **Witness-Aggrieved Party “A”**, **Salko (son of Ahmed) Zolj**, born in 1945, **Džafer Turković**, **Husein Ramović**, **Dervo Bihorac**, **Alija Durić**, **Adil Čaušević**, **Zlata Čaušević**, **Mirsad Čerkez**, **Aladin (son of Hasan) Badžić**, born in 1975, **Dubravko Smolčić** and **Ahmo (son of Adil) Fako**, born in 1951, and although Radoje Lalović and Soniboj Škiljević had the powers to completely control the behavior of the guards in the camp and prevent or at least control the behavior of other persons, police and military, who came to the camp, they did not exercise these powers, and thus they failed to prevent the ill-treatment of the detainees or punish the perpetrators of such ill-treatment in any way whatsoever when the guards were the perpetrators,
- 1.(d) by the direct participation of Radoje Lalović and Soniboj Škiljević in the creation of the forced labor system, the detainees were made to perform forced labor against their will in the way that Radoje Lalović and Soniboj Škiljević, cooperating with the civilian and military authorities outside the camp, knew and approved of making the lists of

detainees who were supposed to go and perform forced labor, whereupon, with their knowledge, encouragement and approval, although they were aware that they could be killed or wounded while performing such labor, the detainees were taken out of the rooms in which they were detained by the camp guards and then taken by the guards to the locations where they performed forced labor while guarded by the guards, or they were handed over to military at the camp gate, who took them away and guarded them while performing forced labor, and thus the detainees performed forced labor at the camp farm estate, dug connecting trenches and trenches at the front lines, collected and buried bodies of soldiers who had been killed, cut firewood, loaded items which Serb soldiers pillaged from non-Serb houses and performed other labor, and during the forced labor many detainees were often verbally and physically ill-treated and beaten up, while many were killed or seriously wounded, among whom the following persons were killed during the mentioned period: **Vahid (son of Muhamed) Gačanović**, born in 1942, **Zulfo (son of Vejsil) Vatrić**, born in 1927, **Mehmed (son of Atif) Isić**, born in 1945, **Ramiz Smajić**, **Hasib Šahović** and **Hasan Šabović**, while the following persons were wounded: **Munib (son of Muharem) Isić**, born in 1952, **Nusret Šunj**, **Adem Balić**, **Nedžad Salihović**, **Dževad Smajić**, **Muharem Rešidović**, **Avdo (son of Adem) Pizović**, born in 1949, **Junuz (son of Bego) Harbaš**, born in 1957, **Mehmed (son of Abdulah) Agić**, born in 1943, and **Almin (son of Zilko) Dželilović**, born in 1971. The Defendants were aware of the ill-treatment, killing and wounding of the detainees, but they never opposed the practice of sending the detainees to perform forced labor or raised the issue of individual responsibility for the killing or wounding of the detainees,

Soniboj Škiljević alone:

From 16 December 1992 to mid-December 1995, as part of a widespread and systematic attack carried out by the military and police as well as paramilitary forces of the Republika Srpska, directed against the non-Serb civilians of the City of Sarajevo, aware of that attack and that his acts constituted part of that attack, in his capacity as Warden of the Correctional Institution *Butmir* in Kula, which mostly functioned as a detention camp, he knowingly and willingly participated in a joint criminal enterprise, aware of the existence of an organized system of ill-treatment of the non-Serb detainees detained in the mentioned KPD and the

commission of crimes against them, sharing the same goal with the responsible persons from the Ministry of Justice of Republika Srpska, primarily the then Minister of Justice Jovo Rosić, KPD Deputy Warden Đorđe Faladžić and the staff performing guard duties in that correctional organization, including guards Nedo Pandurević, Vule Govedarica, Božo Radović and other prison staff, members of the Army of Republika Srpska, in particular members of the Security Service of the Sarajevo-Romanija Corps, members of the civilian and military police and paramilitary formations, which implied persecution of non-Serb civilians on political, national, ethnic and religious grounds, based on discriminatory intent, within which he ordered, perpetrated and incited the implementation of a common plan, according to which, in violation of the rules of international law, severe deprivations of physical liberty and imprisonment of non-Serb civilians in inhumane conditions were carried out, followed by intentional deprivations of life (murders), inhuman treatment, violation of bodily integrity and health, torture and forced labor, and, as a superior and responsible person, he knowingly failed to take the necessary and reasonable measures to prevent the perpetration of the mentioned acts or punish the perpetrators thereof, in the way that:

2. From 16 December 1992 to mid-December 1995, as part of a widespread and systematic attack carried out by the military and police as well as paramilitary forces of the Republika Srpska, directed against the non-Serb civilians of the City of Sarajevo, aware of that attack and that his acts constituted part of that attack, in his capacity as Warden of the Correctional Institution *Butmir* in Kula, which mostly functioned as a detention camp, he knowingly and willingly participated in a joint criminal enterprise, aware of the existence of an organized system of ill-treatment of the non-Serb detainees detained in the mentioned KPD and the commission of crimes against them, sharing the same goal with the responsible persons from the Ministry of Justice of Republika Srpska, primarily the then Minister of Justice Jovo Rosić, KPD Deputy Warden Đorđe Faladžić and the staff performing guard duties in that correctional organization, including guards Nedo Pandurević, Vule Govedarica, Božo Radović and other prison staff, members of the Army of Republika Srpska, in particular members of the Security Service of the Sarajevo-Romanija Corps, members of the civilian and military police and paramilitary formations, which implied persecution of non-Serb civilians on political, national,

ethnic and religious grounds, based on discriminatory intent, within which he ordered, perpetrated and incited the implementation of a common plan, according to which, in violation of the rules of international law, severe deprivations of physical liberty and imprisonment of non-Serb civilians in inhumane conditions were carried out, followed by intentional deprivations of life (murders), inhuman treatment, violation of bodily integrity and health, torture and forced labor, and, as a superior and responsible person, he knowingly failed to take the necessary and reasonable measures to prevent the perpetration of the mentioned acts or punish the perpetrators thereof, in the way that:

- 2.(a)** by direct participation and with his knowledge and consent – although he had the powers to change the detention conditions, determine the detainees’ daily regime and grant them more freedom and rights in the camp, including reasonable living conditions and hygiene standards, while supervising the detention conditions, he did not exercise these powers at all or exercised them insufficiently - during the mentioned period the detainees were imprisoned and placed in inhumane conditions in the way that they stayed in rooms with inadequate conditions which had no heating during winter and which were frequently overcrowded, they had no possibility to satisfy their basic hygienic needs, they were starved by being given very meager daily meals, as a result of which many of them lost weight, and they were deprived of medical aid, due to which the health of some of them deteriorated, and thus, as a consequence of untimely administered medical aid, **Bahrudin (son of Agan) Bečirović**, born in 1946, **Mihrudin (son of Idriz) Begović**, born in 1971, and **Mirsad Zečević** died during the mentioned period,
- 2.(b)** he significantly contributed and knew or at least had reason to know that his subordinates or other persons, mostly military, by taking the detainees out of the camp, were able and wanted to kill them, but still took no action to prevent those persons from doing what they intended to, although he could have done so, rather, with his knowledge, consent or tacit agreement, he enabled them to take the detainees out of the camp and then take them to unknown locations where they intentionally killed them, and in this way on undetermined dates during the mentioned period the following persons

were taken out of the prison and killed: **Kasim (son of Mujo) Hurtić**, born in 1970, and **Munever (son of Ibrahim) Hidić**, born in 1961, after which he took no action to report the perpetrators of these murders,

- 2.(c) with his knowledge, consent and assistance, by which he significantly contributed to and furthered the functioning of the camp system of ill-treatment in the way that he made it possible for the guards to take the detainees out of the rooms in which they were detained and physically ill-treat them or take them to the rooms where they were interrogated by police operatives or military and then also ill-treated, the detainees were subjected to intentional infliction of severe physical and mental pain in the way that they were physically ill-treated by the guards and other persons, military and police, whereby many of them sustained bodily injuries, and thus the following persons were beaten and abused during the mentioned period: **Halid (son of Ahmed) Aruković**, born in 1958, **Šemso (son of Hasan) Jašarević**, born in 1952, **Marijan (son of Anto) Malešić**, born in 1941, **Josip (son of Andrija) Sogović**, born in 1961, **Slavko Srđić**, **Salko Jašarević** and **Islam Zulović**, and although he had the powers to completely control the behavior of the guards in the camp and prevent or at least control the behavior of other persons, military and police, who came to the camp, he did not exercise these powers, and thus he failed to prevent the ill-treatment of the detainees or punish the perpetrators of such ill-treatment in any way whatsoever when the guards were the perpetrators,
- 2.(d) by his direct participation in the creation of the forced labor system, the detainees were made to perform forced labor against their will in the way that he, cooperating with the civilian and military authorities, knew and approved of making the lists of detainees who were supposed to go and perform forced labor, whereupon, with his knowledge, encouragement and approval, although he was aware that they could be killed or wounded while performing such labor and never opposed this, the detainees were taken out of the rooms in which they were detained by the camp guards and then taken by the guards to the locations where they performed forced labor while guarded by the guards, or they were handed over to military at the camp gate, who took them away and guarded them while performing forced labor and physically ill-treated many of them during labor, and thus the detainees performed forced labor at the camp farm estate, dug

connecting trenches and trenches at the front lines, collected and buried bodies of soldiers who had been killed, cut firewood, loaded items which Serb soldiers pillaged from non-Serb houses and performed other labor, and during the forced labor many persons were often verbally and physically ill-treated and beaten up, while many were killed or seriously wounded, among whom the following persons were killed during the mentioned period: **Ismet (son of Šerif) Hidić**, born in 1956, **Safet (son of Hazim) Bešić**, born in 1952, **Denis (son of Mehmed) Ahmić**, born in 1965, **Suad (son of Jusuf) Hasančević**, born in 1973, **Senad (son of Mehmed) Hasančević**, born in 1968, **Izudin (son of Uzeir) Hodžić**, born in 1971, **Samir (son of Ibrahim) Hidić**, born in 1969, **Mustafa (son of Hajrudin) Hurtić**, born in 1961, **Osmo (son of Bečir) Škiljan**, born in 1962, **Salih (son of Šerif) Hurtić**, born in 1968, **Rasim (son of Rasim) Čamdžić**, born in 1966, **Ševal (son of Mumin) Čamavdžić**, born in 1960, **Alen (son of Tomislav) Kure**, born in 1973, **Šemsudin Smajić**, **Senji Lajoš** and **Fadil Osmanović**, while the following persons were wounded: **Husein Hurtić**, **Jasmin Husaković**, **Vahidin Hasančević**, **Hasan Hurtić**, **Sead-Sejo Škiljan**, **Muhamed (son of Muhamed) Hurtić**, born in 1969, **Omer Hidić**, **Rifet Husaković**, **Osman Hurtić**, **Fadil Šabanović**, **Vehid Alić**, **Refik Hodžić**, **Sadmir Husaković**, **Mujo Škiljan**, **Haris Jesenković**, **Senad Hurtić**, **Mevlid (son of Hasan) Hadžić**, born in 1970, **Morina Zenun**, **Esad Klačar**, **Šaćir Čagalj**, **Nihad Mehmedović**, **Nedim Alić**, **Safić Ćosić**, **Rasim Huskić**, **Ferid Hasančević**, **Asim Husaković** and **Rasim Selimović**. The Defendant was aware of the ill-treatment, killing and wounding of the detainees, but he never opposed the practice of sending the detainees to perform forced labor or raised the issue of individual responsibility for the killing or wounding of the detainees,

therefore,

As part of a widespread and systematic attack carried out by the military and police as well as paramilitary forces of the so-called Serb Republic of BiH, and subsequently the Republika Srpska, directed against the non-Serb civilians of the City of Sarajevo, aware of that attack and that their acts constituted part of the attack, as responsible persons in the Correctional Institution *Butmir*, Ilidža Municipality, which in addition to its primary purpose also functioned as a detention camp for the non-Serb civilians, aware of the existence of an

organized system of ill-treatment of the detainees in the mentioned camp and the commission of crimes against them, they knowingly and willingly participated in a systematic joint criminal enterprise together with the responsible persons from the Ministry of Justice of the so-called Serb Republic of BiH, and subsequently the Republika Srpska, as well as the staff performing guard and other duties in that detention camp and the military, police and paramilitary units of the so-called Serb Republic of BiH, and subsequently the Republika Srpska, and in this enterprise, with a common goal which implied persecution of the non-Serb civilians on political, national, ethnic and religious grounds, based on discrimination, they ordered, perpetrated and incited the implementation of a common plan, according to which, in violation of the fundamental rules of international law, severe deprivations of physical liberty and imprisonment of non-Serb civilians were carried out, followed by intentional deprivations of life (murders), inhuman treatment, violation of bodily integrity and health, torture and forced labor, and, as responsible persons, they knowingly failed to take the necessary and reasonable measures to prevent the perpetration of the mentioned acts or punish the perpetrators thereof,

Whereby they would have committed the following criminal offenses:

1. Radoje Lalović – the criminal offense of Crimes against Humanity referred to in Article 172(1)(h) of the Criminal Code of BiH, in conjunction with:

- **subparagraph e) of the same article for the acts stated under Count 1 of the Indictment,**
- **subparagraph k) of the same article for the acts stated under Count 1(a) of the Indictment,**
- **subparagraph a) of the same article for the acts stated under Count 1(b) of the Indictment,**
- **subparagraph f) of the same article for the acts stated under Count 1(c) of the Indictment,**
- **subparagraph c) of the same article for the acts stated under Count 1(d) of the Indictment,**

all in conjunction with Article 29 and Article 180(1) of the Criminal Code of BiH.

2. Soniboj Škiljević - the criminal offense of Crimes against Humanity referred to in Article 172(1)(h) of the Criminal Code of BiH, in conjunction with:

- **subparagraph e) of the same article for the acts stated under Counts 1 and 2 of the Indictment,**
- **subparagraph k) of the same article for the acts stated under Counts 1(a) and 2(a) of the Indictment,**
- **subparagraph a) of the same article for the acts stated under Counts 1(b) and 2(b) of the Indictment,**
- **subparagraph f) of the same article for the acts stated under Counts 1(c) and 2(c) of the Indictment,**
- **subparagraph c) of the same article for the acts stated under Counts 1(d) and 2(d) of the Indictment,**

all in conjunction with Article 29 and Article 180(1) of the Criminal Code of BiH.

Pursuant to Article 189(1) of the CPC of BiH, costs of the criminal proceedings under Article 185(2)(a) through (f) of this Code, as well as remuneration and necessary expenses of defense attorney, will be paid from the budget appropriations of the Court.

Pursuant to Article 198(3) of the CPC of BiH, the aggrieved parties are instructed to pursue their claims under property law in a civil action.

R e a s o n i n g

I. INTRODUCTORY CONSIDERATIONS

1. Under the Amended Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-33/05 dated 2 June 2011, the Accused Radoje Lalović and Soniboj Škiljević were charged that as participants in a systemic criminal enterprise they committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), as read with subparagraphs a), c), e), f) and k) of the CC of BiH, all in conjunction with Article 29 and Article 180(1) of the CC of BiH.

2. Under the First Instance Verdict of the Court of Bosnia and Herzegovina number X-KR-05/59 dated 16 June 2010, the Accused Radoje Lalović and Soniboj Škiljević were found guilty, specifically that the Accused Radoje Lalović, by the acts described under sections I.1, I.1.(a), I.1.(c) and I.1.(d), and the Accused Soniboj Škiljević, by the acts described under sections I.2., I.2.(a), I.2.(c) and I.2.(d), committed the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC of BiH, as read with subparagraphs e), k) and c) of the same Article, for which criminal offenses the Trial Panel imposed on the Accused Radoje Lalović the sentence of 5 (five) years in prison, and on the Accused Soniboj Škiljević the imprisonment of 8 (eight) years. Under the same Verdict, pursuant to Article 284(1)(c) of the CPC of BiH, the Accused Radoje Lalović was acquitted of charges that by the acts described in Count 1.(b) of the Indictment he committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), as read with subparagraph a) of the CC of BiH, while pursuant to the same provisions, the Accused Soniboj Škiljević was acquitted of charges that by the acts described under Counts 1, 1.(a), 1.(b), 1.(c), 1.(d) and 2.(b) of the Indictment, he committed the criminal offense Crimes against Humanity in violation of Article 172(1)(h), as read with subparagraphs e), k), f) and c) of the CC of BiH.

3. Under the Decision of the Appellate Panel of the Court of Bosnia and Herzegovina number X-KRŽ-05/59 dated 10 March 2011, due to the established essential violations of the criminal procedure provisions, the First Instance Verdict of the Court of BiH number X-KR-05/59 dated 16 June 2010 was revoked and a trial scheduled before the Panel of the Appellate Division of Section I for War Crimes of the Court of BiH.

4. After the revocation of the First Instance Verdict, the main trial was held before the Panel of the Appellate Division pursuant to Article 317 of the CPC of BiH.

II. CLOSING ARGUMENTS

A. CLOSING ARGUMENT OF THE PROSECUTION

5. The Prosecutor, in his Closing Argument presented at the hearing held on 15 June 2011, initially referred to the essential elements of the criminal offense of Crimes against Humanity under Article 172 of the CC of BiH. The Prosecutor argued that it followed from the Prosecution evidence that during the relevant period a widespread and systematic attack directed against the civilian population was launched in Bosnia and Herzegovina, that the Accused were aware of this attack, and that their actions constituted an integral part thereof.

6. The Prosecution further referred to the testimonial and documentary evidence tendered in the case record. The Prosecutor argued that the evidence was credible and obtained in a lawful manner.

7. In their Closing Argument, the Prosecution highlighted subjective and objective evidence allegedly proving beyond a reasonable doubt that the KPD *Butmir* Ilidža¹ operated under the exclusive responsibility of the Ministry of Justice, that is, the Ministry of Justice and Administration of the established Republika Srpska from early April 1992 to mid December 1995, and that as such the KPD was not subordinated to the army or police. Rather, it fully cooperated with the military and the police in all areas within its jurisdiction.

8. With respect to the role of the Accused, the Prosecution argued that it was undoubtedly proved that the Accused Radoje Lalović and Soniboj Škiljević had acted in the professional capacities mentioned in the Indictment throughout the relevant period. Although the Accused were not the *de iure* warden and deputy warden of the KPD *Butmir* between early May 1992 and mid December 1995, the Accused had *de facto* performed these functions. Furthermore, it is undoubtedly established the Accused Soniboj Škiljević acted as warden between mid December 1992 and mid December 1995, and fact that the Defense did not contest.

¹ The other name for KPD “Butmir“ Ilidža, more frequently used among the local population, is KPD “Kula“. As witnesses used both names in their testimony, both are also used synonymously in this Verdict.

9. The Prosecutor referred to each Count of the Indictment individually, arguing that it was proven beyond a reasonable doubt that the Accused had committed the acts charged.

10. According to the Prosecutor, it follows from the evidence that non-Serb civilians were detained on the premises of the KPD *Butmir* in inhumane conditions, in rooms considered unfit for living and unheated during winter throughout the entire relevant period. As a result, the physical and mental health of detainees deteriorated. Some even died.

11. It was further proved that the civilians from Kasindolska Street were brought to *Butmir* in May 1992, that on an unspecified date unknown persons took away 37 persons from this group to an unknown location and deprived them of their lives.

12. The evidence shows that detained civilians were physically abused by those guards (members of the police and the army) with the knowledge, consent and support of the Accused. Many detainees sustained physical injuries as a result of the beatings and abuse. The Accused Lalović and Škiljević failed to exercise their powers, that is, they undertook no action whatsoever, to prevent this abuse, although they were aware of it.

13. With respect to the enslavement of the civilians detained on the premises of the KPD *Butmir* (as described under Counts 1d and 2d of the Indictment) the Prosecution argues that the evidence shows that civilians were forced to perform labor at various locations throughout the period covered by the Indictment, that the lives of detainees were often placed at risk at those locations, and that a certain number of detainees were killed or wounded in the course of the labor.

14. These actions amount to persecution as an underlying element of the criminal offense of Crimes against Humanity. Because the individually described acts constituted a willful and serious deprivation of fundamental rights in violation of international law, and because these acts were directed at a group of people on the basis of their ethnicity, the Accused, by their actions, have satisfied each the essential elements of the criminal offense of persecution as a Crime against Humanity.

15. The Prosecution argues that the Accused Lalović and Škiljević knowingly and willingly participated in a joint criminal enterprise, acting as co-perpetrators in concert with other participants in the JCE in acts of unlawful detention, killing, torture, inhumane treatment, and enforcement of detainees to perform forced labor, whereby they significantly contributed to the discriminatory

persecution of the non-Serb civilian population. Specifically, the Prosecution argues that both the Accused are responsible for all individual underlying acts on the basis of their respective functions, in which capacity they were undoubtedly aware that the detention on the premises of the KPD *Butmir* was carried out in contravention of international law, but that, although the Accused were in a position of authority, they failed to take any measure that would prevent the unlawful detentions. Furthermore, although they were aware of the inhumane conditions in which detained civilians were held (which included insufficient food, inadequate hygienic conditions, and inadequate medical care) the Accused tacitly approved of them.

16. Pursuant to the foregoing, and regarding as a particularly aggravating circumstance the Accused's persistence in the commission of the offenses, as well as taking into account the severe consequences that resulted from the Accused's actions, the Prosecution proposed that the Accused receive a prison sentence, by which the purpose of both general and special prevention will be achieved.

B. CLOSING ARGUMENT OF THE DEFENSE

1. Closing Argument of Attorney Slaviša Prodanović Counsel for the Accused Radoje Lalović

17. In his Closing Argument, the Defense Counsel for the Accused Radoje Lalović initially noted that neither he nor his client contested the fact that crimes were committed against the persons arrested in the Kasindolska Street, that the persons brought to the KPD *Kula* during the relevant period were abused and interrogated, that they were inhumanely treated, and that the referenced actions have the character of unlawful acts whose perpetrators should be brought to justice. However, the Defense Counsel contested the existence of any link between the Accused Lalović and the referenced and similar acts. The Defense Counsel submits that these acts occurred before the KPD *Butmir* was established, at a time when the Accused was neither a *de jure* nor *de facto* warden..

18. The Defense Counsel further objected to the application of substantive law, arguing that charges brought pursuant to the CC of BiH are inadmissible and unlawful. Specifically, in trials for war crimes committed during the 1992-1995 period, only the law in effect at the time the crimes were committed, (in this case the CC of SFRY), may necessarily be applied.

19. The theory of joint criminal enterprise as charged under the Indictment of the BiH Prosecutor's Office against the Accused Lalović and Škiljević is also contested. Not only was JCE not provided for by the law that was in effect during the relevant period, as ensues from the Closing Argument of this Counsel in the first instance proceedings² but the Indictment also failed to describe the purpose of the alleged JCE. The Prosecution also failed to describe the other alleged participants in the JCE. These elements should have appeared in the factual description of the Indictment, but alas, they do not. The Indictment also failed to set forth the common intent of the Accused. The Prosecution *does* refer to an exhibit entitled Instruction on the Organization and Activities of Serb People issued by the SDS Main Board on 19 December 1992. However, because the Accused was not a member of the SDS during the relevant period, it is unclear how the Prosecution could conclude that the Accused knew and consented to the contents of the Instructions. The Defense Counsel particularly emphasized that the Prosecution charged the Accused under both referenced Articles, despite the fact that the JCE, as a form of participation in the commission of a criminal offense, derived from Article 180(1) of the CC of BiH, and complicity as derived from Article 29 of the CC of BiH, are mutually exclusive.

20. According to the Defense, the Prosecution presented no subjective nor objective evidence (because no evidence exists), from which one could derive the existence of a discriminatory intent on the part of the Accused Lalović, such intent constituting an essential element of the crime under examination. To the contrary, the testimony of Defense and Prosecution witnesses supports the Defense arguments. No witness alleged that any abusive actions were committed by the Accused, whereas several witnesses testified that the Accused had behaved correctly and that they felt safe when he was around.

21. The Defense Counsel also submitted that the Indictment was defective because Momčilo Mandić, the then Minister of Justice, had been charged with the same acts alleged under the Indictment against the Accused Lalović, but was acquitted in a final verdict. The Defense Counsel submitted that the Appellate Panel must not ignore portions of the *Mandić* Verdict to which the Defense referred. The Defense Counsel also argued that the fact, established in *Mandić*, that the

² Counsel entirely maintained his Closing Argument before the initial Trial Panel

Ministry of Justice of Republika Srpska had no jurisdiction over the non-Serbs detained in the KPD *Kula* during the critical period, should be considered an established fact.

22. The Defense Counsel individually considered each Count of the Indictment, the relevant evidence and the contents of his Final brief in his Closing Argument. Counsel argued that the guilt of the Accused Lalović had not been demonstrated on the basis of the evidence adduced. Therefore, as it ensues from the Closing Argument of the Defense Counsel, the only proper and lawful decision of the Court, pursuant to the principle *in dubio pro reo*, is one that acquits the Accused Lalović.

23. In his final presentation, the Accused Radoje Lalović supported the Closing Argument of his Defense Counsel and accepted it in its entirety.

24. The Accused stated that the evidence provided supported the conclusion that he was not a participant in the widespread and systematic attack and that as a civilian he had no significant role in the conflict itself. Furthermore, that the Prosecutor failed to prove that he had been aware of the existence of the attack or that he participated based on this knowledge; consequently an essential element of the referenced criminal offense was not satisfied.

25. Also according to the Accused, the Prosecutor failed to prove the existence of JCE and the Accused's participation therein.

26. The Accused himself referred to the Counts of the Indictment and the evidence adduced with regard to each Count, stating that the Indictment was vague, understated and unspecified, and that documentary evidence on which to base the referenced charges was totally missing.

27. The Accused finally expressed his regrets for the lost lives, all human sufferings and casualties, his sympathies with the tragedies of victims and their families during 1992. He submitted, however, that the foregoing was not a result of his acts.

2. Closing Argument of Attorney Milorad Rašević, Counsel for the Accused Soniboj Škiljević

28. Defense Counsel initially focused on deficiencies in the Indictment. Specifically, he submitted that (1) the Indictment was filed without conducting a quality investigation, (2) it was based on historically and factually inaccurate facts, and (3) even though the Prosecution had amended it twice, it was still arbitrary and lacking in evidentiary support.

29. The Defense Counsel further referred to the issue of application of substantive law. He briefly presented the Defense position that the law that was in effect during the critical period, (the CC of SFRY) should have been applied in the case at hand.

30. The Defense Counsel further submitted that the Prosecution had failed to prove beyond a reasonable doubt the existence of *actus reus* and *mens rea* elements of JCE, a form of liability introduced through the jurisprudence of The Hague Tribunal which intended to cover the criminal liability of the highest-ranking political and military officers. Counsel also submitted that no evidence existed to find the Accused Soniboj Škiljević guilty based on this institution of criminal liability. By including so many JCE members in the Amended Indictment, the Prosecution has entered the realm of collective responsibility, in a manner that would criminalize an entire nation. According to the Defense Counsel, this is absolutely impermissible pursuant to the criminal law and case law.

31. As stated in the Closing Argument, the Prosecution alleges the responsibility of the Accused on the basis of their alleged positions as warden and deputy warden during the relevant period. The Defense, however, disputes that the Accused held the function of deputy warden between May 1992 and 16 December 1992, inasmuch as this position did not exist at that time. The Accused Lalović and the then Minister Mandić confirmed this; therefore, there is no basis on which the Accused may be found guilty for any crimes occurring during this period.

32. The Defense Counsel further submits that the allegations that non-Serb civilians were detained in the pavilion 2 of the KPD *Butmir* are unfounded. The persons detained, arrested and held by the army were subjected to the security triage and registered as prisoners of war; they undoubtedly had POW status.

33. In relation to Count 2 of the Indictment, the Defense submits that the Prosecution failed to prove beyond a reasonable doubt the general essential element of the criminal offense, namely that the Accused Škiljević had acted as a part of widespread or systematic attack directed against any civilian population. Specifically, if this concerns the attack on the civilian population of the surrounded part of Sarajevo, employees of the Ministry of Justice and the RS Administration did not participate in that attack. Such active actions were undertaken exclusively by members of the army and the police.

34. The Defense argues that, in relation to Count 2 of the Indictment, the Prosecution failed to offer any evidence connecting the acts amounting to commission of the crimes to the Accused Škiljević, and that absolutely no nexus exists in this case.

35. The Defense also referred to Count 2b of the Indictment. The Defense submitted that the criminal offense of murder can only be perpetrated with direct intent, and that the Prosecution, by stating that the Accused “could have at least had the knowledge” raises suspicions as to the offense, thereby entering the sphere of negligence.

36. In referring to the acts under Count 2c of the Indictment, the Defense Counsel submits that his client could not influence members of the police or military security who beat the witnesses during their interrogation.

37. In relation to Count 2d of the Indictment, the Defense Counsel submitted that Defense and the Prosecution evidence, as explained by the Defense in detail in the Closing Argument, demonstrated that members of the army had taken the prisoners of war detained in the KPD *Butmir* to perform labor, and that the Accused Škiljević did not and could not influence on the establishment of this (forced labor) practice.

38. In their Closing Argument, the Defense referred to the alleged connection between the Accused Škiljević and the wounding or death of certain individuals detained in KPD *Butmir* during the relevant period. The Defense pointed to the lack of grounds for such assertions. The Defense referred to evidence showing that the army had exclusive responsibility for the deaths and wounding, and that, as an employee of the Ministry of Justice, the Accused exercised no superior authority over the army.

39. According to the Defense Counsel, for all the foregoing reasons, the Prosecution failed to prove beyond a reasonable doubt that the Accused Škiljević committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH, as read with subparagraphs (e), (k), (a), (f) and (c), all in conjunction with Article 29 and Article 180(1) of the CC of BiH. The Defense moved the Appellate Panel of the Court of BiH to acquit the Accused of charges pursuant to Article 284(1)(c) of the CPC of BiH.

40. The Accused Soniboj Škiljević entirely supported the arguments of his Defense Counsel. The Accused referred to the allegations against him and argued that the evidence demonstrated that he did not commit the offenses as charged. .

III. PROCEDURAL DECISIONS

A. ESTABLISHED FACTS

41. During the First Instance proceedings, pursuant to Article 4 of the Law on Transfer of Cases by the International Criminal Tribunal for the Former Yugoslavia in the Proceedings before the Courts in Bosnia and Herzegovina (the Law on Transfer), the Trial Panel partially granted the Prosecution motions and accepted as proved certain facts established in the trials before the International Criminal Tribunal for the Former Yugoslavia (ICTY), namely 17 facts established in the ICTY case *Prosecutor v. Stanislav Galić (IT-98-29-T)* and 25 facts established in the *Prosecutor v. Momčilo Krajišnik case (IT-00-39-T)*.

42. Since this Panel accepted all the evidence adduced during the First Instance proceedings, the Panel accepted as established facts those that were accepted by the Trial Panel. Accepted in this manner were the facts established in the *Prosecutor v. Stanislav Galić case (IT-98-29-T)* in the scope as follows:

1. *“In September 1991, the Main Board of the SDS recommended the formation of Serbian Autonomous Regions. The first of these was the region of Romanija-Birač in the Sarajevo area ...” (para. 194);*
2. *“On 24 October 1991, BiH Serbs formed the Assembly of the Serbian People of BiH and, in a plebiscite held on 9 and 10 November, overwhelmingly voted to remain part of the SFRY.”(para. 185);*
3. *“On 9 January 1992, the Serbian Republic of BiH (Republika Srpska) was proclaimed with the aim of confederating part of BiH with the SFRY, or otherwise of declaring secession from BiH in order to join the SFRY. During the first months of 1992, Serbian institutions in competition with the ones controlled by the Presidency of the BiH Republic (“the Presidency”) were established throughout BiH, including in most of Sarajevo’s ten municipalities.” (para. 195);*

4. *“In early March 1992, conflict broke out along ethnic lines in various locations in BiH.” (para. 196);*
5. *“Armed conflict broke out after the European Community recognized BiH as a sovereign state on 6 April 1992.”³ (para. 199);*
6. *“On 2 May 1992, a major JNA attack on the centre of Sarajevo occurred while President Izetbegović was in Lisbon for negotiations.” (para. 200);*
7. *“After the JNA partially withdrew, the parliament of Republika Srpska on 12 May 1992 ordered the formation of the Bosnian-Serb Army (“VRS”), designating General Ratko Mladić Chief of its General Staff. On 22 May 1992 BiH was admitted as a member state of the United Nations. The Security Council called for the withdrawal of foreign forces, including the JNA, from BiH territory.³⁶¹ That same day, General Mladić ordered the formation of the Sarajevo Romanija Corps (“SRK”)...(para. 201);*
8. *“The city of Sarajevo came under extensive gunfire and was heavily shelled during the Indictment Period.”⁴ (para. 210);*
9. *“The Trial Record shows however that there was more shelling going into the city and that civilians, and the civilian population as such, in ABiH-held areas of Sarajevo were targeted from SRK controlled territory.” (para. 213);*
10. *“The Trial Record also contains evidence that civilians were deliberately targeted while engaged in civilian activities or while in civilian locations.” (para. 217);*
11. *“The evidence shows that civilians in Novo Sarajevo were targeted from the SRK-controlled area of Grbavica.” (para. 228);*
12. *“UNPROFOR documents reported extensive shooting and shelling in the central area of Sarajevo during the Indictment period. “ (para. 231);*
13. *“The Trial Chamber finds beyond reasonable doubt that on 4 February 1994 around 11.30 a.m. three mortar shells struck a residential neighborhood in Dobrinja ...” (para. 407);*
14. *“The Trial Chamber thus finds that the fourth scheduled shelling incident constituted an attack that was, at the very least, indiscriminate as to its target (which nevertheless was primarily if not*

³ This part originates from the section describing the events in Sarajevo.

⁴ 10 September 1992 through 10 August 1994.

entirely a residential neighborhood) and was carried out recklessly, resulting in civilian casualties.”⁵ (para. 410);

15. “The evidence is that the shelling of the city was fierce in 1992 and 1993.”⁶ (para. 561);

16. “The Trial Chamber understands that submission as pointing to the ultimate purpose of the campaign of sniping and shelling against civilians in Sarajevo.” (para. 576);

17. “The Trial Chamber finds beyond reasonable doubt that many hundreds of civilians were killed and thousands were injured in ABiH-controlled areas during the Indictment Period.” (para. 581);

and the facts established in the case *Prosecutor v. Momčilo Krajišnik (IT-00-39-T)*, in the scope to follow:

18. “In early May 1992, the SDS held a session to establish a Serb municipality of Hadžići and to define its boundaries.” (para. 542);

19. “On 7 May 1992, armed Serb reservists and Serb policemen entered the Hadžići municipal building, evicting the employees. The same day, the SDS issued an ultimatum demanding that the Muslim police, TO officers, and members of other municipal bodies leave Hadžići municipality by the following day.” (para. 542);

20. “On 8 May 1992, an artillery attack against the police station of Hadžići was launched.” (para. 542);

21. “During the next few days, Serbs took control over parts of the municipality and started to arrest people and expel and evict large parts of the non-Serb population.” (para. 543);

22. “Two to three thousand Muslim and Croat men, women and children left Hadžići town, many left on foot and withdrew through the woods. Serb women and children were evacuated from Hadžići on buses.” (para. 543);

23. “Only two to three hundred members of the original Muslim and Croat population remained in Hadžići town.” (para. 54.);

24. “On 20 May 1992, armed Serbs in JNA uniform or dressed in olive-green camouflage uniforms entered Musići, gathered fourteen Muslim men and took them to the garage in the Hadžići

⁵ The fact under number 13.

⁶ This note concerns Sarajevo.

municipal assembly building. Another 46 men were held in the same garage. The Serb forces ill-treated the detainees and did not give them sufficient food and water.” (para. 544);

25. *“On 25 May 1992, Serb forces transferred some of the detainees from the garage of the municipal building to the Hadžići sports centre...” (para. 545);*

26. *“While in detention in the Hadžići sports centre, the detainees were often beaten and sexually abused by members of the paramilitary units.” (para. 545);*

27. *“In the beginning of March 1992, a Serb SJB was created after the Muslim police officers were dismissed from their positions.” (para. 552);*

28. *“By the end of April 1992, under the orders of Lieutenant Colonel Tadija Manojlović, JNA heavy artillery, rocket launchers, anti-aircraft guns, and tanks, fired every evening on targets in Sarajevo, including the neighborhoods of Butmir and Hrasnica in Ilidža municipality.” (para. 553);*

29. *“By early May 1992, Serb forces controlled Ilidža.” (para. 553);*

30. *“The Chamber concludes that, after Serb forces took control over Ilidža municipality in May 1992, they detained mainly Muslim and Croat civilians in twelve detention facilities in the municipality.” (para. 556);*

31. *“Many Muslims left the territory of Ilidža municipality out of fear and due to repressive measures undertaken against them.”(para. 556);*

32. *“Preparations to take over the majority-Muslim village of Lješevu began in March 1992 when Serbs erected checkpoints, distributed arms to the locals, and placed heavy artillery on the surrounding hills.” (para. 560);*

33. *“Serb authorities detained mostly Croat and Muslim civilians at nine detention centres in the municipality in 1992...” (para. 563);*

34. *“The Chamber concludes that, in total, at least 22 Muslims were killed by Serb forces in the municipality of Ilijaš in May and June 1992. Serb forces attacked several Muslim-majority villages and destroyed a large number of historical and religious monuments.” (para. 565);*

35. *“A May 1993 MUP report indicates that 13,000 Muslims and 40 Croats had left the municipality while 3,400 Serbs had arrived.”⁷ (para. 572);*

36. *“Serbs detained mostly Muslim and Croat civilians in four detention centers around the municipality. The detainees were severely beaten and mistreated by Serb guards.”⁸ (para. 73);*

⁷ Concerns the Municipality of Novi Grad.

⁸ Concerns the Municipality of Novi Grad.

37. “Serb authorities detained mostly Croat and Muslim civilians at nine detention centers in the municipality in 1992.”⁹ (para. 580);
38. “On 22 May, Serb forces attacked and shelled the predominantly Muslim village of Donja Vinča, setting houses on fire and forcing the villagers to leave.” (par. 584.);
39. “In Pale, Muslims were detained in five detention facilities.” (para. 588);
40. “In late June and July 1992, buses organized by the crisis staff transported a huge number of Muslims from Pale to the Muslim part of Sarajevo.” (para.588);
41. “Around 29 or 30 May 1992, Serb residents started leaving Trnovo expecting an imminent attack. The following day, Serb forces under the command of Ratko Bundalo shelled Trnovo for several hours. Houses owned by Muslims were the main target of the shelling. In addition, a Serb unit set Muslim houses in town on fire and destroyed the town mosque.” (para. 591);
42. “About 2,500 Muslims left Trnovo as a result of this attack. Those who remained—mainly women, children, and the elderly – were taken for questioning before the crisis staff.” (para. 592);
43. “On 2 May 1992, Serbs surrounded and shelled the villages of Svrače and Semizovac, in Vogošća municipality.” (para. 599);
44. “After the take-over of Svrače and Semizovac in early May 1992, the Serbs took 470 Muslim men, women, and children to the barracks in Semizovac.” (para. 599).

B. EXCLUSION OF THE PUBLIC

43. At the trial hearing held before the Panel of the Appellate Division on 16 May 2011, the Defense Counsel for the Accused Soniboj Škiljević proposed that pursuant to Article 235 of the CPC of BiH, the public be excluded during the testimony of witness Božo Radović. In explaining such a proposal, the Defense Counsel submitted that when this witness was examined during the First Instance proceedings, the public was excluded due to the sensitivity of the subject of his testimony. Given that a risk existed that in his testimony before the Panel of the Appellate Division the witness might also address the same facts and the circumstances he previously testified about in the closed session, the Defense Counsel proposed his examination without the presence of the public.

⁹ Concerns the Municipality of Novo Sarajevo.

44. The Prosecution objected to the request of the Defense Counsel, arguing that the justified reasons existed to exclude the public in the First Instance proceedings, however, given that the witness is now summoned again to testify about the membership and participation in the JCE, such a protective measure during his testimony was neither necessary nor required.

45. Having considered the proposal of the Defense Counsel and the Prosecutor's submission, the Panel decided to exclude the public during the testimony of witness Božo Radović. The Panel reasoned that even accepting the Prosecutor's argument, (namely that the witness was summoned to testify about the participation in the JCE), the Panel could not guarantee with certainty that the witness will not mention certain facts and the circumstances he had testified about before at the session closed for the public. Therefore, in order to secure the full confidentiality of the referenced information, the Panel found justified the proposal of the Defense Counsel, and decided to grant it. The Panel held it appropriate to apply the measure of public exclusion during the testimony of witness Božo Radović, as prescribed under Article 235 of the CPC of BiH.

IV. APPLICABLE LAW

46. The Indictment of the BiH Prosecutor's Office charged the Accused Radoje Lalović and Soniboj Škiljević that as part of a widespread or systematic attack carried out by the military and police as well as paramilitary forces of the Serb Republic of BiH, and subsequently the Republika Srpska, directed against the non-Serb civilians of the City of Sarajevo, aware of that attack and that their acts constituted part of the attack, as responsible persons in the Correctional Institution *Butmir*, Ilidža Municipality, which in addition to its primary purpose also functioned as a detention camp for the non-Serb civilians, aware of the existence of an organized system of ill-treatment of the detainees in the mentioned camp and the commission of crimes against them, they knowingly and willingly participated in a systematic joint criminal enterprise together with the responsible persons from the Ministry of Justice of the so-called Serb Republic of BiH, and subsequently the Republika Srpska, as well as the staff performing guard and other duties in that detention camp and the military, police and paramilitary units of the so-called Serb Republic of BiH, and subsequently the Republika Srpska, and in this enterprise, with a common goal which implied persecution of the non-Serb civilians on political, national, ethnic and religious grounds, based on discrimination, they ordered, perpetrated and incited the implementation of a common plan, according to which, in violation of the fundamental rules of international law, severe deprivations of physical liberty and

imprisonment of non-Serb civilians were carried out, followed by intentional deprivations of life (murders), inhuman treatment, violation of bodily integrity and health, torture and forced labor, and, as responsible persons, they knowingly failed to take the necessary and reasonable measures to prevent the perpetration of the mentioned acts or punish the perpetrators thereof, and thereby committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH, as read with subparagraphs a), c), e), f) and k) of the same Article, all in conjunction with Article 29 and Article 180(1) of the CC of BiH.

47. Throughout the proceedings, the Defense for both the Accused contested the application of the CC of BiH by submitting that the only law to be applied in the case was the CC of SFRY as being the law that was in effect at the time of commission of the referenced criminal offenses.

48. The Panel therefore examined which law should be applied having relied primarily on Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention), and Article 3, 4 and 4.a) of the CC of BiH.

49. The criminal offense charged against these two Accused is prescribed under the CC of BiH, the law that came into effect in 2003, that is, undoubtedly after the commission of the referenced events.

50. Article 3 of the CC BiH prescribes the principle of legality, namely that the criminal offenses and the criminal sanctions shall be prescribed only by law and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law. Article 4 of the Criminal Code of BiH prescribes that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence; if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.

51. Article 7 of the ECHR also prescribes the principle of legality. Pursuant to Article 2.2 of the Constitution of BiH, the European Convention for the Protection of Human Rights has primacy over all laws in BiH. This provision of the European Convention prescribes the general principle that prohibits the imposing of the sentence more severe than the one that was prescribed at the time of commission of the criminal offence, but it does not prescribe the application of the most lenient

law. Furthermore, Article 7(2) prescribes that „*this Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations*”, and the referenced principle is almost identically prescribed in Article 15(2) of the ICCPR. Both the ECHR and the ICCPR represent documents which BiH has ratified as a successor of Yugoslavia, and therefore these regulations are binding.

52. Article 7(2) of the ECHR was also adopted in the applicable legislation of Bosnia and Herzegovina through Article 4 (a) of the CC of BiH. It ensues from the referenced provision that, in addition to the prohibitions contained in Articles 3 and 4 of the CC of BiH, these provisions shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed was criminal according to the general principles of international law.

53. War crimes, including Crimes against Humanity as the offense charged against the Accused in the case at hand, undoubtedly represent crimes also pursuant to the provisions of international law. In this respect, war crimes must be categorized under “the general principles of international law”, as prescribed under Article 4 (a) of the CC of BiH, that is “*the general principles of law recognized by civilized nations*”, as prescribed under Article 7(2) of the ECHR. Because of the foregoing, the application of the CC of BiH in the case at hand is justified, as specified by the Prosecution in the Indictment.

54. In addition, even though the CC of SFRY did not prescribe the criminal offense of Crimes against Humanity as a separate criminal offense in the way as prescribed by the new law, the forms of commission of the referenced criminal offense were included in individual charges under Articles 136, 141 through 147, 154, 155 and 186 of the CC of SFRY. It ensues from the foregoing that these criminal offenses were also punishable under the then applicable criminal code which did not require a showing of all of the elements of Crimes against Humanity. This speaks in support of the fact that the application of the CC of BiH was justified, as also established by this Panel.

55. Finally, the application of the CC of BiH is additionally justified with the fact that any punishment which may be imposed pursuant to this law for the referenced criminal offense is certainly more lenient than the death penalty which was in effect pursuant to the law applicable during the critical period. Therefore, the application of the CC of BiH is also in accordance with the principle of legality and the principle of application of the more lenient law to the perpetrator. This

position is also in accordance with the position of this Court in other cases of Crimes against Humanity, which was also upheld by the Constitutional Court of BiH in the *Abduladhim Maktouf* case (AP-1785/06 dated 30 March 2007).

V. FUNCTION OF WARDEN AND DEPUTY WARDEN OF THE KPD

BUTMIR

56. According to the Indictment, the Accused are guilty primarily on the basis of their positions as warden and deputy warden. Therefore, before we consider the individual Counts of the Indictment, the existence of the elements of JCE, and the question of the guilt of the Accused, this Panel will determine if and when the Accused performed the functions of warden or deputy warden of the KPD. By the terms of the Indictment, the Accused are only charged with the commission of crimes that occurred during the period of time in which they held the positions of warden and deputy warden.

57. According to the Prosecution, the Accused Radoje Lalović performed the function of warden of the KPD *Butmir* between early May and 16 December 1992, and the Accused Soniboj Škiljević acted as his deputy during this time. During the period from 16 December 1992 to mid-December 1995, the Accused Soniboj Škiljević acted as warden. The Prosecution argued that after a brief shutdown around the 4th or 5th of April 1992, the KPD *Butmir* was restarted in early May of that year, and that it operated continuously through mid-December 1995 (and onwards, but only the period prior to mid-December 1995 is relevant to this inquiry).

58. The Defense contested these claims throughout these proceedings. According to the Defense, the position of deputy warden of KPD *Butmir* did not exist throughout 1992, and it follows that the Accused Soniboj Škiljević cannot be held responsible for events prior to 16 December 1992. Additionally, the Accused Radoje Lalović, who was never the *de jure* KPD *Butmir* warden, began *de facto* acting in this capacity only in early August 1992, later than is alleged in the Indictment. Further, with respect to the Prosecution's theory that the KPD *Butmir* functioned almost continually, with the exception of a brief period around the 4th or 5th of April 1992, which ended by early May 1992, the Defense alleged that the disruption to the functioning of the KPD *Butmir* had lasted longer; specifically, that the KPD *Butmir* was formally re-established on 30 June 1992, and only started functioning much later – no sooner than in August of that year – at which point the Accused Radoje Lalović assumed the position of warden.

59. The questions of the time period during which the KPD *Butmir* operated and the Accused acted in the positions of warden and deputy warden, were key issues, insofar as the Prosecution had charged the Accused with committing crimes in these capacities, and a significant number of the alleged crimes the Accused are charged with committing took place in May and June 1992.

**A. BEGINNING OF THE ARMED CONFLICT, DISBANDING AND
REESTABLISHMENT OF THE KPD BUTMIR**

60. The Panel has made a conscientious evaluation of all the evidence adduced, both individually and collectively, and concluded that the KPD *Butmir*, which had regularly functioned before the war within the then-Republic of BiH, was terminated on 4 April 1992, but reestablished pursuant to the decision on its foundation dated 16 June 1992 published in the Official Gazette of the Serb People in BiH number 10/92 dated 30 June 1992 (Exhibit T-79).

61. This is not a unique situation, and other examples of discontinuities in the operation of penal-correctional institutions during the armed conflict and throughout the territory abound. The Decision on the foundation of penal-correctional institutions in the territory of Srpska Republika Bosnia and Herzegovina, dated 1 May 1992, prescribed that penal and correctional institutions throughout the territory of Srpska Republika Bosnia and Herzegovina would henceforth fall under the jurisdiction of the state administration of Republika (Exhibit T-76). Witness testimony and documentary evidence confirms the break in operations at the KPD *Butmir*.

62. The Defense questioned the last pre-war warden of this institution, Fadil Kreho, about the initial disbandment of the KPD *Butmir* and its subsequent reestablishment. The Panel found testimony of this witness objective, convincing, clear and credible, and supportive of other evidence adduced. Based on this, and the fact that the Panel has no reason to suspect that this witness would not tell the truth, the Panel considered testimony of this witness highly reliable.

63. Witness Fadil Kreho testified that he had held the position of the KPD *Butmir* warden until 4 April 1992. According to the witness, on that day he left for home, and was unable thereafter to return to work, given that members of the local community Kotorac had captured the KPD *Butmir*. He heard this from the guard commander. As a conscientious employee, the witness attempted to preserve the KPD property and organize an economic unit to function within it. On 15-16 April 1992 he left for the KPD in a van, together with several former employees of the KPD. The guards, however, denied him access to his office, and refused to allow him to remove any of his personal

effects. When he and the other former employees arrived at the KPD, they were advised to leave as soon as possible. The witness testified that one of the guards he had seen in the KPD was Ranko Tešanović. In addition to him, there were other guards, some old ones, but there were new ones as well. Some guards wore old guard uniforms, but some guards within the KPD compound wore camouflage uniforms.

64. His testimony related to the army's take-over of the KPD *Butmir* in April 1992 was also confirmed by witness Velimir Kenjić, who testified that he was working in the boiler-room in the KPD *Butmir* when the army took over the KPD on 5 April 1992.

65. Witness Ranko Tešanović testified that he had worked at the police station (PS Kula) established on the premises of the KPD. Milenko Tepavčević was chief of that station. The witness testified that as a member of the PS Kula he was deployed at the KPD gate. This witness confirmed that there was a break in the otherwise continuous functioning of the KPD, and stated that the institution was taken over by the Crisis Staff from Kasindol in early April 1992. His statement to the effect that he acted as a member of the PS Kula was corroborated by documentary evidence (Certificate of the MoI SR BiH, SJB Ilidža-PS Kula, number 21/92 dated 4 June 1992), which confirms that Ranko Tešanović was a member of the PS Kula at the relevant time. The Certificate was signed by the then-Chief of the Police Station, Milenko Tepavčević.

66. Momčilo Mandić, former Minister of Justice and Administration of Srpska Republika BiH in April-December 1992 testified before the Appellate Panel, as a Defense witness for the Accused Škiljević. In his capacity as Minister, Momčilo Mandić had been aware of the disbanding of pre-war penal institutions, their reestablishment and subsequent operation in the territory of Srpska Republika, Bosnia and Herzegovina. His testimony relates to these facts. The Verdict acquitting Momčilo Mandić of charges of having committed Crimes against Humanity in violation of Article 172 of the CC of BiH, including unlawful detention, murder, torture, slavery and other inhumane acts against non-Serb civilians who were detained in the KPD *Butmir* during the period from early April 1992 until mid December 1995, was final. The Momčilo Mandić Verdict concerns the same acts and the same time-period as the Indictment against the Accused Lalović and Škiljević. Although Momčilo Mandić was mentioned as a member of the JCE in the Indictment against the Accused Lalović and Škiljević, the Panel found his testimony to be credible. It should be noted that due to the final Verdict entered in his case, no criminal charges could be filed as a result of his

testimony before this Panel. The fact that the testimony of Momčilo Mandić was corroborated by witnesses Fadil Kreho and Ranko Tešanović, as well as the documentary evidence, also weighs in favor of regarding his testimony as convincing and truthful.

67. Witness Momčilo Mandić testified that penal-correctional institutions, including the KPD *Butmir*, were disbanded after the recognition of Bosnia and Herzegovina and the armed conflict outbreak in April. He explained that only KPD buildings taken over by the army and the police remained. It follows from this witness testimony that the Ministry of Justice and Administration took over the KPD premises no earlier than early August 1992. However, even after the Ministry of Justice and Administration took over the KPD *Butmir*, pavilion no. 2 remained outside the control of the Ministry. Specifically, persons who were under the jurisdiction of the army were accommodated in pavilion no. 2. Although the Ministry of Justice had explained the need to separate those persons from civilians who were serving sentences pursuant to the decisions of regular courts to the Government, the problem went unresolved. The witness also explained of the process by which the KPD was brought under the jurisdiction of the Ministry of Justice. According to the witness, the KPD *Butmir* was the first penal-correctional institution established in the territory of Republika Srpska pursuant to the Decision published on 30 June 1992 in the Official Gazette. However, the KPD only began functioning around a month later. The fact that during this period KPD *Butmir* was not under the jurisdiction of the Ministry of Justice and Administration, as argued by the Prosecution, also follows from documentary evidence T-25 (a Proposal to resolve the further status of 38 detainees, which was addressed to the MoI and the Ministry of Justice). According to the Proposal, „it [is] necessary to find out an adequate solution for the further status of 38 persons who were captured on 12 May 1992 by the TO Ilidža forces (Kasindolska Street)”. It can be concluded from this document that the Ministry of Interior of Srpska Republika Bosnia and Herzegovina, SJB Novi Grad-SJB Ilidža, SM Kula had jurisdiction over the detained persons.

68. It follows from Exhibit A-O1-1 (guard roster) that the Ministry of Justice took over the guard roster from the MoI on 25 or 26 July 1992, from which it can be concluded that the KPD was transferred to the jurisdiction of the Ministry of Justice in late July.

69. Defense documentary Exhibit O-2-17 (Order of Stanislav Galić dated 22 October 1992), corroborates witness Mandić testimony, by showing that the military and the police retained certain competences in the KPD *Butmir* even after it had been taken over by the Ministry of Justice in

August 1992. It follows from this evidence that individuals captured in combat, after being interrogated by the corps command, were sent to the KPD *Kula*, and subsequently transferred to the MoI and exchange commission.

70. The foregoing evidence undermines the Prosecution argument that the KPD *Butmir* resumed functioning, after a short break, under the jurisdiction of the Ministry of Justice and Administration of Srpska Republika BiH as of 1 May 1992. The Panel notes that Exhibit T-76 (the Decision), which the Prosecution believes proves their allegations, in fact implies a logical sequence of events after its issuance. Separate decisions established individual penal institutions; the Ministry of Justice promulgated Decision tendered as Exhibit T-79 (calling for the establishment of the KPD *Butmir* dated 30 June 1992), and afterwards made the practical arrangements necessary to implement the decision. The Defense claims, and witness Mandić affirms, that the KPD *Butmir*, as it was established under the Decision (T-76), could not have started operating the same day the decision was issued, but rather that certain actions had to be taken as a prerequisite to its functioning, including the systematization of working positions, the posting of job vacancies, the drafting of a book of rules, the securing of material. This would certainly have required some time. The Panel considered these arguments reasonable and convincing.

71. Based on the foregoing, the Panel concludes that KPD *Butmir*, although briefly disbanded on 4 April 1992, resumed functioning as a penal-correctional institution under the jurisdiction of the Ministry of Justice in late July or early August 1992.

B. FUNCTIONS OF THE ACCUSED DURING THE CRITICAL PERIOD

72. With respect to the positions of warden and deputy warden of the KPD *Butmir*, which was re-established in late July or early August 1992 as an institution under the jurisdiction of the Ministry of Justice, the Panel examined the role of the Accused from this point onwards.

73. The Defense for the First-Accused did not contest that the Accused Lalović acted as warden of the KPD *Butmir* during this period. Many witnesses, themselves former detainees of KPD *Butmir*

during the relevant period, identified the Accused Lalović as a warden. Additionally, the earliest document signed by Accused Lalović in his capacity as warden is from August.¹⁰

74. The Panel notes that a large number of the witnesses who had been detained on the premises of KPD *Butmir* in late June or early July 1992 stated that they saw the Accused Lalović within the KPD compound between those dates, that he was present at their arrival, and some even said that he had introduced himself as a warden. According to the Accused Lalović himself, Minister Mandić called him out of retirement in June 1992 to participate in the organizational activities associated with the re-establishment of the KPD (whereas Mandić dealt with personnel). According to the Accused, he spent May and June primarily at the KPD farming economy. This Panel concludes that after this period, and bearing in mind the role he had in the KPD re-establishment, the Accused began spending more time within the KPD compound (as a result of which he was seen by the prisoners during June and July 1992), until the moment the KPD was officially handed over to the Ministry of Justice in late July 1992, whereupon assumed the *de facto* role of warden.

75. Pursuant to the foregoing, the Panel concludes that the KPD *Butmir*, as an institution under the jurisdiction of the Ministry of Justice and Administration, whose employee was Radoje Lalović, did not function during May 1992. Furthermore, none of the witnesses detained in the KPD *Butmir* saw the Accused Lalović or Škiljević in the KPD in May 1992.

76. Count 1(b) of the Indictment relates to “an unspecified date in May”. The testimony of witness Rešad Brdarić, the only survivor of the group of 38 persons brought from Kasindolska Street, shows that he and his neighbors were captured on 14 May 1992. According to the witness, heavy shooting was heard from the direction of the Nedžarići barracks in the early morning of 14 May 1992. Some time later, a personnel carrier came to the neighborhood and all Muslims and Croats were called to surrender weapons. Once their weapons had been handed over, they had their names taken down, and 38 of them were taken toward Ilidža (and thereafter to Kula) at gunpoint. The witness remained in Kula until 21 May 1992, on which date he went out with a group of 17 others. He was the only one of the group of 38 persons with whom he had been arrested to be

¹⁰ T-81 (Certificate number 01-227/92 dated 18 August 1992).

exchanged. That the group from the Kasindolska Street was captured and brought to the KPD *Butmir* on 14 May 1992 is confirmed by the Defense Exhibit A-O-1 (Duty take-over diary).¹¹

77. The remaining 37 persons from Kasindolska Street were deprived of liberty in May. Specifically, it follows from Defense Exhibit O-2-6, Obituary list of persons from the Kasindolska Street from the *Dnevni avaz* daily newspapers dated 16 October 2009, that these individuals were killed on 25 May 1992.

78. Based on this evidence, it is clear that the group from the Kasindolska Street was arrested and brought to Kula, taken away from there and executed in May, 1992, a time when the KPD *Butmir* was not under the jurisdiction of the Ministry of Justice and when the Accused was not present thereon. Therefore, the Panel acquits both Accused of charges under this Count of the Indictment.

79. With respect to Accused Škiljević, alleged to have held the position of deputy warden during the period from early April 1992 through 16 December 1992, the Panel excludes the period before early August 1992. The Panel concludes that the KPD did not function during this period, and accordingly will only examine events occurring between August to December 1992.

80. After thoroughly analyzing the evidence, the Panel could not conclude beyond a reasonable doubt that Accused Škiljević acted as deputy warden during the relevant period. The Panel was unable to conclude beyond a reasonable doubt that the position of deputy warden even existed during the relevant period. Without documentary evidence to support the vague and unconvincing witnesses testimony concerning the possible role of the Accused Škiljević and the his position in the KPD prior to 16 December 1992, and taking into account the principle of *in dubio pro reo*, the Panel acquits this Accused of all charges involving events taking place prior to 16 December 1992. The Panel, however, thoroughly examined all of the evidence relevant to the charges relating to the period after the above referenced date, during which the Accused Škiljević held the position of warden of the KPD *Butmir de jure* and *de facto*, a fact that the Defense did not contest.

¹¹ A-O-1 (Duty hand-over diary), pages marked 03455990 and 03455991.

VI. JOINT CRIMINAL ENTERPRISE

A. JCE IN GENERAL

81. According to the Indictment of the BiH Prosecutor's Office, the Accused Radoje Lalović and Soniboj Škiljević were charged that within a widespread and systematic attack of the military, police and paramilitary forces of the Serb Republic BiH, subsequently the Republika Srpska, directed against the non-Serb civilians of the City of Sarajevo, aware of that attack and that their acts constituted part of that attack, knowingly and willingly participated in a joint criminal enterprise, aware of the existence of an organized system of ill-treatment of the non-Serb detainees detained in the mentioned KPD *Butmir* and the commission of crimes against them, which implied *persecution* of non-Serb civilians on political, national, ethnic and religious grounds, based on discriminatory intent, namely severe deprivations of physical liberty and imprisonment of non-Serb civilians in inhumane conditions were carried out, followed by intentional deprivations of life (murders), inhuman treatment, violation of bodily integrity and health, torture and forced labor and, as superiors and responsible persons, they knowingly failed to take the necessary and reasonable measures to prevent the perpetration of the mentioned acts or punish the perpetrators thereof.

82. In the course of the criminal proceedings, the Defense repeatedly contested the applicability of JCE,, alleging that the referenced theory, as developed thorough the ICTY case law, did not constitute an integral part of the applicable criminal legislation in Bosnia and Herzegovina during the critical period and was therefore not applicable in the case at hand. In addition, the Defense submitted that even if the JCE theory was accepted, the Prosecution had failed to prove beyond a reasonable doubt the existence of the essential elements of a JCE.

83. The Prosecution based its theory of the Accused's criminal liability on the JCE doctrine. The Defense contested this form of liability throughout proceedings. However, although national legislation does not strictly prescribe the institution of JCE, it has been developed through the ICTY case law, and adopted into our legislation through Article 180(1) of the CC of BiH, which stipulates the punishment of the persons contributing to the attainment of a common goal. In fact, Article 180 of the CC of BiH prescribes the types of criminal liability that the Panel must establish the existence of in order to sentence a person for the relevant criminal offenses.

84. Article 180 of the CC of BiH is identical to the adopted Article 7(1) of the ICTY Statute. As such, Article 180 was adopted into the national legislation together with its international sources,

interpretations and definitions. Pursuant to the foregoing, also included in the national legislation the theory of JCE liability, which, pursuant to Article 7(1) of the Statute, has been defined as a manner of co-perpetration by which criminal liability is being acquired. Specifically, the international judicial interpretation of the term “commission” as it appears in Article 7(1) of the Statute, and subsequently adopted into national law in Article 180(1) of the CC of BiH, establishes: a) that JCE is a form of co-perpetration that establishes individual criminal liability; b) that the commission, as prescribed under Article 7(1) of the Statute, or Article 180(1) of the CC of BiH, implies a willful participation in the JCE, and c) that the elements of JCE have been established under international law and are very recognizable.¹²

85. Participation in a JCE does not *per se* constitute a criminal offense; rather JCE is a form of participation by which an individual may commit or contribute to the commission of a crime.. The ICTY Appeals Chamber in the *Tadić* case has established the existence of three types of JCE . Accordingly, these three modes of liability are accepted by this Court. The first type of JCE is “general” or “basic”, the second is “systemic”, and the third is “extended”.

86. Pursuant to the Indictment, the Accused Radoje Lalović and Soniboj Škiljević were charged with the participation in a systemic JCE, known as JCE type II.

87. Systemic JCE was a part of international customary law during the period when the incriminating acts had taken place, and its definition and elements are well established.¹³ After being defined in the judgment of the ICTY Trial Chamber in the *Tadić* case, the systemic joint enterprise has been applied in several cases to address crimes associated with the use of detention camps in the territory Bosnia and Herzegovina in 1992-1995. The understanding of JCE as a form of liability has been improved and supplemented through these decisions, but has certainly not changed. The theory of systemic JCE has also been accepted by the Court of Bosnia and Herzegovina elsewhere.¹⁴ Although neither the Judgments of the ICTY nor the Verdicts of the Court of BiH are binding on this Panel, they constitute highly persuasive authority for consideration in our analysis. Thus, the manner in which the systemic JCE has been qualified through the case law of

¹² *Rašević and another*, X-KR-06/275 (Ct. of BiH), First Instance Verdict, dated 28 February 2008, pp.114-115.

¹³ *Prosecutor v. Tadić*, IT-94-I, Trial Judgment, 7 May 1997, para. 669.

¹⁴ *Rašević*, First Instance Verdict and *Rašević and another*, X-KRŽ-06/275 (Ct. of BiH), Second Instance Verdict, 6 November 2008.

these Courts, and the manner in which its *actus reus* and *mens rea* have been determined, reflect its status as customary international law since 1992.

B. ACTUS REUS ELEMENTS OF JCE

88. *Actus reus* elements of JCE characteristic for all three types thereof are as follows:

- i. Plurality of persons
- ii. Existence of common design
- iii. Participation of the accused in the furtherance of common design¹⁵

89. According to the *Brđanin* Appeals Chamber, in determining whether these elements have been satisfied, it is necessary to identify “the plurality of persons belonging to the JCE (even though it is not necessary to name each of the persons involved); specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal and the general identities of the intended victims); make a finding that this criminal purpose is not merely the same, but also common to all of the persons acting together within a joint criminal, and characterize the contribution of the accused in this common plan.”¹⁶

90. From the description of the elements of JCE found in the *Tadić, Brđanin et al.* Judgments, it is clear that, an accused need not have performed any part of the *actus reus* of the perpetrated crime to be held responsible for a crime committed pursuant to a JCE,¹⁷ but rather must have participated in furthering the common purpose at the core of the JCE. Specifically, it is necessary to determine that the accused significantly contributed to enforcing the system.¹⁸ As the Appeals Chamber in the *Brđanin* case determined, the contribution of the accused in the crimes for which the existence of his liability should be established must at least be “significant.”¹⁹

91. Furthermore, *any* contribution in furthering the common purpose or enforcing the system does not imply the existence of a “significant contribution”. According to the Trial Chamber in the *Kvočka* case,²⁰ significant participation or contribution in an enterprise means an act or omission

¹⁵ *Rašević*, First Instance Verdict, p.126.

¹⁶ *Prosecutor v. Brđanin*, IT-99-36-A, Appeals Judgment, 3 April 2007 (“*Brđanin*“ Appeals Judgment), para. 430.

¹⁷ *Brđanin* Appeals Judgment, para. 427.

¹⁸ *Prosecutor v. Tadić*, IT-94-1-A , Appeals Judgment, 15 July 1999 (“*Tadić*“ Appeals Judgment), para. 202.

¹⁹ *Trbić*, X-KR-07/386 (Ct of BiH), First Instance Verdict, 16 October 2009, para. 216 (citing *Brđanin* Appeals Judgment, para. 430).

²⁰ *Prosecutor v. Kvočka*, IT-98-30/1, Trial Judgment, 2 October 2009 (“*Kvočka*“ Trial Judgment), para. 309.

that makes an enterprise efficient or effective, e.g. a participation that enables the system to run more smoothly or without disruption. The Panel concludes that the significance of a particular contribution will be evaluated on a case-to-case basis.

92. In order for the Panel to find that a criminal purpose is common to all persons within a joint criminal enterprise, we note that the Appeals Chamber of the Special Court of Sierra Leone in *Sesay et al* listed factors derived from ICTY jurisprudence which are relevant to make this determination.²¹ These factors include: the manner and degree of interaction, cooperation and communication (common action) among these individuals,²² the manner and degree of mutual reliance on each other's contributions, as well as to achieve criminal objectives on a scale which they could not have attained alone;²³ the existence of common structure of decision-making,²⁴ degree and nature of non-agreement; alleged common criminal purpose in terms of both the criminal goal intended and its scope.²⁵ The Panel must find that persons alleged to constitute the plurality of persons joined together to achieve their common goal.²⁶

93. Assuming the other criteria are fulfilled, a person who participates in a joint criminal enterprise in any of the following ways may be found guilty for the crime committed:²⁷

- (i) by participating directly in the commission of the agreed crime itself (as a principal offender);
- (ii) by being present at the time when the crime is committed, and (with knowledge that the crime is to be or is being committed) by intentionally assisting or encouraging another participant in the joint criminal enterprise to commit that crime; or

²¹ *Trbić* First Instance Verdict, para. 217, quoting *Prosecutor v. Sessay et al*, SCSL-04-15-A, (Appeals Judgment) 26 October 2009, para. 1141.

²² *Brđanin* Appeals Judgment, para. 410 (the Panel held that the decision on whether the crime was committed within a common goal is issued based on the fact that the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose). See also *Prosecutor v. Krajišnik*, T-00-39, Trial Judgment, 27 September 2006 (“*Krajišnik*“ Trial Judgment), para. 884.

²³ *Krajišnik* Trial Judgment, para. 1082.

²⁴ Persons “need not be organised in a military, political or administrative structure” since the law does not prescribe that the existence or non-existence of such a structure is relevant for proving. *Tadić* Appeals Judgment, para. 227; *Vasiljević*, IT-98-32-A, Appeals Judgment, 25 February 2004 (“*Vasiljević*“ Trial Appeals Judgment), para. 100;

²⁵ *Brđanin* Appeals Judgment, para. 430 (the Court must „specify the common criminal purpose in terms of both the criminal goal intended and its scope (e.g. the temporal and geographic limits of this goal and the general identities of the intended victims.”).

²⁶ *Trbić* First Instance Verdict, para. 217 quoting *Prosecutor v. Martić*, IT-95-11, Appeals Judgment, 8 October 2008, para. 172. See also *Brđanin*, Appeals Judgment, para 431.

- (iii) by acting in furtherance of a particular system in which the crime is committed by reason of the accused's position of authority or function, and with knowledge of the nature of that system and intent to further that system.

94. This list is not exhaustive. The ICTY Appeals Chamber in *Vasiljević* explained that it is generally sufficient for a participant in a joint criminal enterprise to perform acts that are directed at furthering *in some way* the common design.²⁸ If the agreed crime is committed by one or other of the participants in that joint criminal enterprise, all of the participants in that enterprise are guilty of the crime regardless of the part played by each in its commission.²⁹ However, all persons (principal perpetrators) who carry out the *actus reus* of the crimes do not have to be members of a joint criminal enterprise.³⁰ At the same time, it is not necessary that the accused be present when the crime is committed in order to be guilty of the crime as a member of JCE.³¹

95. An accused or another member of a JCE may use principal perpetrators to carry the *actus reus* of a crime.³² However, “an essential requirement in order to impute to any accused member of the JCE liability for a crime committed by another person is that the crime in question forms part of the common criminal purpose.”³³ This may be inferred, *inter alia*, from the fact that “the accused or any other member of the JCE closely cooperated with principal perpetrator in order to further the common criminal purpose.”³⁴

96. Keeping the above in mind, this Panel concluded that the joint criminal enterprise, as a form of liability charged against the Accused, was not adequately described in the Indictment. Specifically, in order to find a person guilty of participation in a JCE, the facts relevant to all

²⁷ *Trbić* First Instance Verdict, para. 218 quoting *Prosecutor v. Krnojelac*, IT-97-25-T, Trial Judgment, 15 March 2002 (“*Krnojelac*” Trial Judgment), para. 81.

²⁸ *Trbić* First Instance Verdict, para. 219 quoting *Vasiljević* Appeals Judgment, para. 102.

²⁹ *Trbić* First Instance Verdict, para. 219 quoting *Krnojelac* Trial Judgment, para. 82.

³⁰ *Trbić* First Instance Verdict, para. 219 quoting *Brđanin* Appeals Judgment, para. 414.

³¹ *Trbić* First Instance Verdict, para. 219, quoting *Krnojelac* Appeals Judgment, para. 81.

³² *Trbić* First Instance Verdict, para. 220 quoting *Martić* Appeals Judgment, para. 68 citing *Prosecutor v. Martić*, IT-95-11-T, Trial Judgment, 12 June 2007 (“*Martić*” Trial Judgment), para. 438.

³³ *Trbić* First Instance Verdict, para. 220 quoting *Martić* Appeals Judgment, para. 68 citing *Martić* Trial Judgment, para. 438. See also *Brđanin* Appeals Judgment, para. 418.

³⁴ *Trbić* First Instance Verdict, para. 220, quoting *Martić* Appeals Judgment, para. 68 citing *Martić* Trial Judgment, para. 410. See also *Brđanin* Appeals Judgment, para. 410.

elements of the Joint Criminal Enterprise and the participation of the Accused therein have to be presented in the indictment.³⁵

97. However, in the view of this Panel, upon an analysis of the factual substratum of the Indictment, no conclusion can be drawn about the existence of elements of JCE.

98. When it comes to the *actus reus* ‘plurality of persons’ element, according to the Indictment the Accused Radoje Lalović and Soniboj Škiljević participated in the JCE together with “...the then Minister of Justice Momčilo Mandić, the staff performing guard duties in that correctional organization, including the guards Neđo Pandurević, Vule Govedarica, Božo Radović and other prison staff, members of the Army of the so-called Serb Republic of BiH (subsequently Republika Srpska), in particular members of the Security Service of the Sarajevo-Romanija Corps, members of the civilian and military police, Serb territorial defense and paramilitary formations...,”³⁶ namely that the Accused Soniboj Škiljević participated in the JCE together with “the then Minister of Justice Jovo Rosić, KPD Deputy Warden Đorđe Faladžić and the staff performing guard duties in that correctional organization, including guards Neđo Pandurević, Vule Govedarica, Božo Radović and other prison staff, members of the Army of Republika Srpska, in particular members of the Security Service of the Sarajevo-Romanija Corps, members of the civilian and military police and paramilitary formations...”³⁷ However, during the evidentiary proceedings the Prosecution neglected to present evidence showing the participation of the referenced persons in the JCE, instead simply stating in the Indictment that these individuals participated in the JCE. It is not possible to arbitrarily determine participants in a JCE based on a presumption that they might have had a common design and acted in its furtherance. Such a conclusion could only be reached on the basis of evidence tendered into the case record. Additionally, the purpose of JCE as a mode of liability was not to bring within its remit all members of the military, paramilitary or other formations and organizations. As stated by the Trial Panel of the Court of BiH in the *Miloš Stupar et al.* case, JCE was not intended to “stretch from the highest echelons of the military leadership to the lowliest foot

³⁵ *Bundalo et al.*, X-KRŽ-07/419 (Ct. of BiH), Second Instance Verdict, 28 January 2011, para. 256.

³⁶ This factual description is contained in the part of the Indictment containing the *chapeau* elements for the relevant period from early May 1992 until 16 December 1992.

³⁷ This factual description is contained in the part of the Indictment containing the *chapeau* elements for the relevant period from 16 December 1992 to mid December 1995.

soldier.”³⁸ The Prosecution has the burden of proof, and was obliged to narrow the scope of JCE and specifically identify its participants within the referenced structures. Although it was not required of the Prosecution to provide full names of the participants in the JCE, in order to satisfy this element the participants must have been made identifiable. This was not done in this case. Therefore, this Panel concludes that the first *actus reus* element of the JCE was not satisfied.

99. Additionally, this Panel concludes that the existence of a common purpose that implies or includes the commission of an offense prescribed under the Statute (or the CC of BiH) has not been shown. A common purpose, does not need to have been pre-planned or formulated prior to the commission of the underlying offense, and may be improvised at the site. The common purpose must be described in the indictment by explaining how the plurality of persons acted together in the furtherance of a joint criminal enterprise. However, after having analyzed the Indictment, this Panel could not determine the existence of joint acts of the Accused with the other arbitrarily named categories of participants. Even with respect to the persons specifically named by the Prosecution as members of the JCE: Momčilo Mandić, Neđo Pandurović, Božo Radović (in relation to Counts 1, 1a), 1b), 1c) and 1d) of the Indictment), that is, Jovo Rosić and Đorđe Faladžić (in relation to Counts 2, 2a), 2b), 2c) and 2d) of the Indictment), the Prosecution failed to explain the connection between the named persons and the Accused, thereby explaining how the furtherance of the common purpose was sought.

100. Finally, the Panel did consider the third *actus reus* element of the JCE satisfied, which is the participation of the Accused in the common design. As explained earlier, participation does not have to include the commission of a concrete criminal offense, but must amount to a significant contribution to the commission of crimes. Because the Accused did not directly perpetrate any of the underlying acts of persecution, the Indictment should have clearly set forth the manner in which the acts of direct perpetrators were attributed to the Accused, that is, to prove that the undertaken acts formed an integral part of the common purpose. While it is not necessary that the accused be present when the crime is committed in order to be found guilty of the crime as a member of a JCE, and it is accepted that an Accused may rely on one or more principal perpetrators to carry the *actus reus* of a crime; it must also be proved that the crime in question forms part of the common

³⁸ *Miloš Stupar et al.* X-KR-05/24 (Ct. of BiH), First Instance Verdict, 29 July 2008, citing Cassese, *International Criminal Law* (Oxford University Press) (2003) pgs. 209-210.

criminal purpose (the letter may be inferred, *inter alia*, from the fact that the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose).³⁹

101. Because joint action or participation in a common purpose was not described in a single Count of the Indictment, the Panel could not find this *actus reus* element satisfied either.

C. MENS REA ELEMENTS OF JCE

102. Systemic JCE is “a variant” of the basic JCE⁴⁰, differing from the latter in its *mens rea* requirements. The *mens rea* element for each of the three forms of liability is different.⁴¹ Basic JCE requires that the accused must both intend the commission of the crime (this being the shared intent on the part of all co-perpetrators)⁴² and intend to participate in a common plan aimed at its commission.⁴³ However, *mens rea* for systemic JCE is more complex. Specifically, the required *mens rea* in the systemic JCE necessitates (1) personal knowledge of the organized system set in place and its common criminal purpose, and (2) the intention to further that particular system. If the common criminal purpose involves the commission of a crime that requires specific intent, for example, persecution, then the participant must share that specific intent.⁴⁴ (JCE 3 ?)

1. Personal knowledge of the organized system set in place and its common criminal purpose as the first *mens rea* element of the systemic JCE

103. What would be implied under the term “organized system” in light of *mens rea* elements of the systemic JCE is the system of commission of the crimes described under Counts 1, 1a), 1b), 1c), 1d), 2, 2a), 2b), 2c), 2d) of the Indictment, that is, persecution of the non-Serb population by murders, enslavement, enforced labor, unlawful detention, torture and other inhumane acts. Specifically, during the period from early May 1992 through mid December 1995, a large number of non-Serbs passed through the KPD *Butmir*. These persons were unlawfully arrested and

³⁹ *Bundalo* Second Instance Verdict, para. 268 citing *Trbić* First Instance Verdict, paras. 219 - 220.

⁴⁰ *Rašević* First Instance Verdict, p. 112 citing *Tadić* Appeals Judgment, para. 203.

⁴¹ *Bundalo* Second Instance Verdict, para. 251 citing *Tadić* Appeals Judgment, para. 228.

⁴² *Trbić* First Instance Verdict, para. 221. See also *Vasiljević* Appeals Judgment, para. 97, 101; *Prosecutor v. Krnojelac*, IT-97-25-A, Appeals Judgment, 17 September 2003 (“*Krnojelac* Appeals Judgment”), para. 31.

⁴³ *Trbić*, First Instance Verdict, para. 221. See also *Brđanin* Appeals Judgment, para 356 quoting *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Trial Judgment, 28 February 2005 (“*Kvočka*“ Trial Judgment), para. 82 („the intent to further the common design“).

⁴⁴ *Trbić* First Instance Verdict, para 221 citing *Kvočka et al.* Trial Judgment, para. 228.

unlawfully detained on the premises of the KPD in the so-called pavilion 2, and spent various periods of time in inhumane and unfit living conditions, pursuant to which they were unable to adequately satisfy hygienic needs, were without adequate and timely medical care, were without adequate food supply, as a result of which many prisoners lost a significant amount of weight, and were taken to perform labor. As a consequence, some individuals sustained physical injuries, and others died. To satisfy the *mens rea* element of the JCE, it is first necessary to determine that each Accused, during the respective period of time in which each Accused held positions of authority in *Butmir*, had the awareness about the existence of an organized system set in place and its criminal purpose.

104. This Panel concludes without a doubt that the Accused were aware of the existence of an organized system whose purpose was the persecution of the Bosniak population and effected by individual criminal offenses described in the operative part of the Indictment. The Panel reached this conclusion based on a conscientious evaluation of all the evidence adduced and an analysis of personal characteristics of the Accused.

105. Specifically, during the periods when each Accused acted as warden (?or deputy warden?) of the KPD *Butmir*, the non-Serb civilians were detained in pavilion 2 of the KPD. During these periods, civilians were continually apprehended and kept detained for various lengths of time (until they were exchanged). These civilians were taken to perform forced labor during their detention in the KPD. According to the witnesses who were detained at the KPD during the relevant periods, the Accused were present within the KPD compound at the time of their apprehension and detention, or were seen within the KPD compound during their detention. Some witnesses even had an opportunity to speak with the Accused at the KPD. The Panel therefore concludes that all the incidents amounting to Crimes against Humanity occurred while the Accused were at the KPD *Butmir*. Such incidents (to be addressed in detail further in the reasoning) could not have gone unnoticed by a person of average intelligence, let alone by the highly-educated and experienced Accused, who incidentally were aware of the obligations those responsible for supervising detainees had towards the detainees. The treatment of detainees, which did not represent a *de minimus* deviation from the applicable rules and procedures, but rather constituted a series of egregious violations of fundamental human rights, including the right to protection, enshrined in the Geneva Conventions, undertaken for the purpose of persecuting persons on the grounds of their “inadequate” ethnic and national origin, could not have gone unnoticed by the Accused.

Accordingly, this Panel holds that the Accused were aware of the organized system whose goal was the persecution of the non-Serb population on discriminatory grounds. The Panel also determined that the detainees were civilians. The reasons for reaching this conclusion will be presented in the part of the Verdict addressing the essential elements of the criminal offense of Crimes against Humanity.

2. Intent to contribute to the system in force as the second *mens rea* element of the systemic JCE

106. However, in order to satisfy the *mens rea* elements, the Prosecution must prove that the Accused had the intent to further the system. Given that in the case at hand “the organized system” was designed to carry out “the persecution of the non-Serb population”, the intent to keep this system in effect would imply a discriminatory intent, which constitutes the essence, that is, the essential element of the criminal offense of persecution as prescribed under Article 172(1)(h) of the CC of BiH.

107. With regard to the required *mens rea* for the offense of persecution, the Trial Chamber in the *Blaškić* case concluded that: “The underlying offence of persecution requires the existence of a *mens rea* from which it obtains its specificity.... It is the specific intent to cause injury to a human being because he belongs to a particular community or group that bestows on it its individual nature and gravity... In other words, the perpetrator of the acts of persecution does not initially target the individual but rather membership in a specific racial, religious or political group.”⁴⁵ Therefore, the crime of persecution requires a *mens rea* of a higher degree than for other crimes against humanity. In order to possess the necessary heightened *mens rea* for the crime of persecution, the accused must have shared the aim of the discriminatory policy: the removal of those persons from the society in which they live alongside the perpetrators, or, eventually from humanity itself.”⁴⁶

108. Based on the evidence adduced, this Panel could not conclude that the Accused had discriminatory intent or intent to contribute to the existing system. Quite to the contrary, in fact.

⁴⁵ *Prosecutor v. Blaškić*, IT-95-14, Trial Judgment, 3 March 2000 (“*Blaškić*” Trial Judgment), para. 235.

⁴⁶ *Prosecutor v. Čerkez*, IT-05-14/2, Trial Judgment, 26 February 2001 (“*Čerkez*” Trial Judgment), para. 220, citing *Kupreškić*, IT-95-16-T, Trial Judgment, 14 January 2000 (“*Kupreškić*” Trial Judgment), para. 634.

109. It follows from the evidence adduced that the non-Serb civilians were detained in pavilion 2 of the KPD *Butmir*. The Accused Lalović himself testified that he knew that these persons “were essentially civilians”. The Panel will separately examine the issue of the Accused’s responsibility of over this pavilion of the KPD. In this section, however, the Panel will exclusively address the existence of the *mens rea* required for the systemic JCE charged against the Accused, which also implies the existence of a discriminatory intent as crucial for the *mens rea* of persecution.⁴⁷

110. Although all of the witnesses testified about the poor living conditions in the KPD Kula, the 2 insufficient meals a day each prisoner received, the lack of space, the inability to adequately meet hygienic needs (which will all be analyzed by the Panel within considerations of separate offenses underlying the crimes against humanity), several witnesses did identify correct behavior on the part of the Accused. Witness B testified that the Accused Lalović personally took him to the Kasindo hospital to receive medical assistance. Witness Junuz Harbaš testified that upon his arrival in Kula, Warden Lalović told them that no one would abuse prisoners, and that, as far as he knew, there was no abuse in the camp during the period he spent in the camp. This was also confirmed by Hasib Dželilović, who testified that Lalović had met his promise that no detainee in Kula “would be touched”. Witness Avdo Pizović testified that in September or October 1992 the food improved, that on one occasion Lalović brought them cigarettes and that all prisoners in the presence of Lalović felt safe, that Lalović opposed the persons who took them to perform labor, and told those persons that detainees should not be mistreated. Witness Munib Isić testified that both Lalović and Škiljević had cautioned others against abusing detainees. Witness Delka Jamaković testified that the Accused Škiljević bought cigarettes to the group of detainees brought to Kula with her. All these actions by Accused Lalović and Škiljević point to an attempt to assist and improve the conditions of the prisoners, and not to a discriminatory intent to persecute the prisoners.

111. The Prosecution tries to circumstantially establish the existence of intent on the part of the Accused to maintain the organized system from the fact that during certain periods of time the Accused Lalović and Škiljević performed the function of warden of the KPD *Butmir*. The Panel, however, finds that this inference is too broad, insofar as the status of warden does not in itself amount to a piece of evidence proving the existence of a discriminatory intent. The existence of the

⁴⁷ John Jones & Steven Powles, *International Criminal Jurisprudence*, (Oxford University Press) (2003), pg. 214.

subjective element of JCE does not follow from the operative part of the Indictment nor from the evidence adduced. On the contrary, as explained in the paragraph above, the evidence adduced points to the Accused's disagreements with the discrimination against civilians on ethnic grounds undertaken as part of a policy of persecution.

D. RELATIONSHIP BETWEEN JCE AND COMPLICITY

112. This Panel notes that the Indictment alleges the Accused's participation in a joint criminal enterprise as well as their complicity. Specifically, the Accused are charged with having committed the referenced criminal offense as co-perpetrators (Article 29 of the CC of BiH), namely that by their „orders, perpetration and incitement they contributed to the implementation of a common design”, that is, participated as co-perpetrators in the joint criminal enterprise.

113. However, according to this Panel, JCE and complicity are mutually exclusive modes of liability whose co-existence is not possible. Article 29 of the CC of BiH states that “If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which *a decisive contribution has been made* to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.” With respect to joint perpetration (complicity as prescribed by our legislator) it must be established that a plurality of persons participated in the commission of the offense or took some other action that made a decisive contribution to its commission. Therefore, co-perpetrators are perpetrators in their own right, and in order to establish that the elements of complicity have been satisfied by the Accused, the facts amounting to a satisfaction of the Article 29 requirements must have been plead in the Indictment, and be so great that it would not have been possible to commit the criminal offense had the Accused not contributed in the manner alleged. Furthermore, pursuant to Article 32 of the CC of BiH, the accomplice shall be considered guilty within the limits set by his own intent or negligence – he is liable within the limits of their own guilt. The liability of accomplices does not depend on the degree to which other participants in the same criminal offense are found liable. Rather, the guilt of each accomplice is determined on the basis of the clear description of the acts of the accomplice amounting to participating in or contributing to the commission of the offense. According to this Panel, however, the participation of the Accused in the commission of the individual charges alleged in the Indictment is insufficiently described, with the result that it is impossible to clearly establish their individual guilt under this mode of liability.

114. As explained above, the Panel is also unable to reach a conclusion from the factual description of the Indictment or the evidence adduced with respect to the existence of the *actus reus* and *mens rea* JCE elements. We concluded that it is impossible to compensate for the deficiencies of available evidentiary material with respect to JCE as a mode of liability alleged in the Indictment. Disregarding this, however, we turn now to the relationship between JCE, as a form of commission of the offense derived from Article 180(1) of the CC of BiH, and co-perpetration, derived from Article 29 of the CC of BiH.

115. It follows from paragraphs 91-122 of this Verdict (particularly the paragraphs detailing the explanation of the *mens rea* element of the systemic JCE), that the existence of a “joint intent” is a prerequisite for the existence of a JCE. The ICTY Appeals Chamber has concluded that a participant in the joint criminal enterprise must share “the goal of joint criminal enterprise ... and not only be aware thereof.”⁴⁸ It is also necessary to establish that the Accused, as participants in the JCE, made their significant contribution in furtherance of a common design. A significant contribution is not same as a decisive contribution, which is required for the participants acting as co-perpetrators according to the terms of Article 29 of the CC of BiH. Additionally, in order to find an accused guilty pursuant to a theory of JCE, an Accused does not need to be present at the commission of the offense itself, and the offense of whose commission he is being held liable under JCE need not be “his offense”. Co-perpetrators, however, are always participants in the commission of their own offenses. Further, in order to find a person guilty as a co-perpetrator, his/her acts must be of such gravity that they contributed in a decisive manner to the commission of the offense. An essential element of complicity is this decisive contribution, the contribution without which it would not be possible to perpetrate the offense. With the JCE, on the contrary, a decisive contribution need not be made. Rather, an individual may be qualified as a participant in the JCE even when their contribution is not so great that the offense would not have been possible without their contribution.

116. Based on the above, the Panel concludes that JCE and complicity exclude each other as modes of liability. For an individual to be guilty as a co-perpetrator, it must have been established

⁴⁸ *Prosecutor v. Milan Milutinović et al.*, IT-05-87-PT, Decision on Ojdanić’s motion contesting the jurisdiction: indirect complicity, 22 March 2006, para. 20.

that the individual made a decisive contribution to the commission of the offense, a higher degree of participation than that required by the theory of JCE II also plead in this case.

117. Particularly in an extremely complex case like this, which necessitates an inquiry into a series of different but mutually related events, involves a large number of victims and witnesses, it is necessary for the indictment to clearly describe the participation of each accused in the commission of the offense. Where a JCE is pled the precise role and nature of participation of the accused in the JCE must be clearly described,⁴⁹ which does not occur in this Indictment.

118. Although the existence of a systemic JCE and the Accused's participation therein was not proved beyond a reasonable doubt, the Panel has elected to examine the acts underlying the charge of the commission of Crimes against Humanity in order to determine whether the Panel would be justified in recharacterizing the charges against the Accused.

VII. LEGAL FINDINGS CONCERNING THE CRIMINAL OFFENSE OF CRIMES AGAINST HUMANITY

A. GENERAL ELEMENTS OF THE CRIMINAL OFFENSE OF CRIMES AGAINST HUMANITY

119. The Accused Radoje Lalović and Soniboj Škiljević were charged with the commission of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), as read with subparagraphs (a), (c), (e), (f) and (k) of the CC of BiH.

120. According to Article 172 of the CC of BiH, the criminal offense of Crimes against Humanity is committed by "Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts: (a) Depriving another person of his life (murder);... (c) Enslavement; ... (e) Imprisonment or other severe deprivation of physical liberty; (f) torture; ... (h) Persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling

⁴⁹ *Bundalo et al.* Second Instance Verdict, para. 270.

under the competence of the Court of BiH...(k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health. Accordingly, the Prosecutor, must prove, in addition to the elements of concrete criminal offenses, that:

- a. a widespread or systematic attack directed against any civilian population existed
- b. the accused had knowledge about such an attack
- c. the accused knew that his acts constituted or could constitute an integral part of the attack, more precisely, that a nexus exists between the attack and the acts of the accused

121. If the Prosecutor cannot establish beyond a reasonable doubt the existence of a single one of these general elements of the criminal offense of Crimes against Humanity, the Accused cannot be found guilty of the individual underlying acts of the crime. If, on the other hand, the Panel concludes that the general elements have been satisfied, it is necessary to establish the existence of acts amounting to violations of Article 172 CC of BiH undertaken by the perpetrator as a part of such an attack.

B. UNDERLYING CRIMINAL OFFENSES RELEVANT TO THE CASE AT HAND

122. The Panel will at this point refer to the individual criminal offenses charged against the Accused Radoje Lalović and Soniboj Škiljević as the commission of the criminal offense of Crimes against Humanity, within which the Accused were charged with the persecution of the non-Serb civilian population: unlawful detention, inhumane acts committed with the intention to inflict great sufferings or serious physical injuries, murder, torture and enslavement.

1. Persecution

123. Persecution refers to an intentional and severe deprivation of fundamental rights, contrary to international law, based on the identity of a group or collective. Persecution, therefore, means persecution of any group or collective on political, racial, national, ethnic, cultural, sexual or other grounds, generally accepted as unlawful by international law, in relation to any part of this paragraph of the Article concerned, or any criminal offense prescribed by the CC of BiH, or any criminal offense falling within the jurisdiction of the Court of BiH. Persecution requires a showing of a discriminatory intent on the part of the accused. This Panel accordingly examined whether the

Accused Radoje Lalović and Soniboj Škiljević had such a discriminatory intent during the critical period.

2. Depriving another Person of Life - Murder

124. Murder means depriving another person of life, while the criminal offense of murder set forth in Article 172(1)(a) of the CC of BiH implies depriving another person of life within the context of a widespread or systematic attack directed against the civilian population, and with the awareness and knowledge of the accused of the murder. The essential elements of the criminal offense of murder are: a) death of a victim; b) death as a result of act or omission of the accused or his subordinate; c) wherein the accused or his subordinate intended to deprive the victim of his life or cause severe injury to his bodily integrity, for which he could reasonably anticipate that it will cause death.

3. Enslavement - Forced Labor

125. *Enslavement* refers to the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.⁵⁰ As defined by the Trial Chamber in the *Krnjelac*⁵¹ case, the *actus reus* of enslavement is the exercise of those powers, and the *mens rea* is the intentional exercise of these powers.

4. Unlawful Detention

126. Unlawful detention, as an underlying act of the criminal offense of Crimes against Humanity, refers to detention violative of the rules of international law. The ICTY has described the essential elements of the criminal offense of unlawful detention as a Crime against Humanity as follows: “an individual is deprived of his or her liberty; the deprivation of liberty is imposed arbitrarily, that is, no legal basis can be invoked to justify the deprivation of liberty; the act or omission by which the individual is deprived of his or her physical liberty is performed by the accused or a person or persons for whom the accused bears criminal responsibility with the intent to

⁵⁰ The definition of “enslavement” under Article 172 of the CC of BiH corresponds in its entirety with the definition of “slavery” under Article 5 of the ICTY Statute, which, as concluded by the Trial Chamber in *Prosecutor v. Kunarac*, IT-96-23-T & IT-96-23/1-T, Trial Judgment, 22 February 2001 (“*Kunarac*” Trial Judgment), para. 523, is an offense identical with the criminal offense of slavery under Article 3 of the ICTY Statute.

deprive the individual arbitrarily of his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty.”⁵²

5. Torture

127. Pursuant to the definition under Article 172(2)(e) of the CC of BiH “torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the perpetrator except that torture shall not include pain or suffering arising only from, or being inherent in or incidental to, lawful sanctions”. Therefore, in order to establish torture, the acts of the perpetrator must satisfy the following essential elements: a) that by act or omission, severe physical or mental pain or suffering was inflicted on the victim; b) that the offense was committed against the person detained by the perpetrator or under the control of the perpetrator c) that the act or omission was committed intentionally; d) that the offense is not a result of commission of legal sanctions. With respect to essential element (d) set forth above, it is necessary that the act or omission was committed for one of the purposes described in the *Furundzija* Appeals Judgment: to obtain information or admission, punish, intimidate or coercing the victim or third persons, or discrimination against the victim or a third person on any grounds.⁵³ It follows from the foregoing that torture, as an underlying act of the criminal offense of Crimes against Humanity, always has a certain goal or purpose, without which, the infliction of severe pain does not qualify as torture.⁵⁴

6. Other Inhumane Acts of a Similar Character

128. Other inhumane acts of a similar character are the criminal offenses committed with the intention of causing great suffering or serious bodily injury or mental harm. For these offenses it is necessary to prove the existence of acts or omissions of similar gravity to other offenses set forth in Article 172 of the CC of BiH. While the expression “other inhumane acts of a similar character” is rather imprecise, it was chosen precisely so that no perpetrator would escape punishment for *all* inhumane acts, including those that could not be specifically listed in the law. According to the

⁵¹ *Krnojelac* Trial Judgment, para. 350, citing *Kunarac* Trial Judgment, para. 540.

⁵² *Mandić*, X-KR-05/58 (Ct. of BiH), First Instance Verdict, p. 128, citing *Krnojelac* Trial Judgment, para. 115.

⁵³ *Prosecutor v. Furundzija*, IT-95-17/1-A, Appeals Judgment, 21 July 2008 (“*Furundzija*” Appeals Judgment), para. 111.

⁵⁴ *Prosecutor v. Kunarac, et al.*, IT-96-23, Appeals Judgment, 12 June 2002 (“*Kunarac*” Appeals Judgment), para. 153.

ICTY Chamber in the *Kupreškić* case, a detailed listing of the acts considered inhumane, that is, “a detailed categorization would simply create a possibility to avoid the letter of prohibition.”

**C. ESTABLISHMENT OF ESSENTIAL ELEMENTS OF THE OFFENSE OF CRIMES
AGAINST HUMANITY IN THE CASE AT HAND**

129. With respect to the essential elements of the criminal offense of Crimes against Humanity, this Panel considers it proved beyond a reasonable doubt that in the territory of the city and wider area of Sarajevo, a widespread or systematic attack was launched against the non-Serb population during the critical period,, and that the Accused were aware of this attack.

**1. Existence of Widespread or Systematic Attack directed against the Non-Serb Civilian
Population**

a. The Attack was Widespread

130. Based on the evidence adduced at the main trial, the Panel considers is established beyond a reasonable doubt that during the critical period an attack was launched against the civilian population in the wider area of the city of Sarajevo. This attack was, at times, launched in parallel with combat activities and attacks on military targets. The Panel reached this conclusion on the basis of facts accepted in the first instance proceedings as established in the ICTY Judgments in the cases *Prosecutor v. Stanislav Galić*, Case No.: IT-98-29-T, Trial Judgment, 05 December 2005 and the *Prosecutor v. Momčilo Krajišnik*, Case No.: IT-00-39-T, Trial Judgment, 27 September 2006, and a conscientious analysis of the testimony of a large number of witnesses examined during the proceedings. It undoubtedly ensues from the witness testimony that an attack was launched against civilian targets in the wider area of the city of Sarajevo and its surroundings during the critical period.

131. It follows from the established facts that the city was shelled and under fire throughout the critical period,⁵⁵ a fact that was confirmed by most of the witnesses heard. Witnesses testified about the shooting, arrival of personnel carriers and tanks in the neighborhoods where they lived, and the entry of armed soldiers into residential areas and apartments.

⁵⁵ See Established facts 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 28, 38, 41, 43.

132. It follows from the testimony of witness A that before his arrest on 12/13 May 1992 they heard shooting during the night in their surrounding, due to which they could not sleep. On the day of his capture, shooting was heard during the afternoon hours and they left a basement shelter after a threat that a hand grenade would be thrown at them. They then saw that an armed soldier in the olive-drab uniform had kicked the door and threatened with an automatic rifle, while a personnel carrier was parked up the street with barrels turned toward them.

133. Witness Suvad Korjenić lived in Dobrinja III before the armed conflict. He testified that on the day of his capture on 10/11 May 1992, they had heard “heavy shooting”, saw tanks and personnel carriers entered their residential area in three places. Four men in green uniforms threw hand grenades in front of the buildings of those who did not want to open their doors and come out.

134. Witness Rešad Brdarić, who until 14 May 1992 lived in his apartment in Kasindolska Street next to number 62, testified that the shooting started after 1 May 1992, that a personnel carrier came to his neighborhood on 14 May, from which Muslims and Croats were invited by megaphone to surrender weapons. As a result, they were captured and taken to Kula.

135. Witness Alisa Muratčauš described the beginning of the armed conflict in the Sarajevo neighborhood Aerodromsko Naselje where she had lived. She testified that Serb forces entered the neighborhood with personnel carriers and tanks. They burst through armored glass doors of buildings and apartments, checked the names of the persons they found there and thereupon took all non-Serb inhabitants to a camp in the early hours of 17 June 1992. Witness Aladin Badžić, who lived in the same neighborhood, confirmed that well-equipped Serb soldiers came to this neighborhood on that day. He was arrested on this occasion and taken to Kula. He also described the earlier (repelled) attack of “Chetniks”, who were his neighbors. He recalled that they came in a personnel carrier from the Nedžarići direction on 5 May 1992 but were repelled..

136. Witness Junuz Harbaš testified that the conflict in the Hadžići area began around 10 May 1992. Specifically, on 22-23 May 1992 three or four soldiers came to his apartment, searched it, and removed him to the front of the building. They abused him and other neighbors who were taken out in the same manner. In addition, witnesses from the Hadžići and Binježevo⁵⁶ territory described

⁵⁶ Munib Isić, Hasan Šunj, Mušan Šunj, Suno Dupovac, Senaid Stupar, Almin Dželilović, Fadil Vlačić, Mujo Kalkan.

in an almost identical manner the beginning of conflicts in their towns - the soldiers arriving, removing and mistreating people, all of which took place almost at the same time in May–June 1992. Witness Dželilović testified to the 13 May entry of Serb soldiers into the village on personnel carriers and the removal of a large number of Muslims to the sports hall in Hadžići.

137. It follows from the testimony of witness Mehmed Agić, who left his home due to the shelling of Rogatica in June 1992, that attacks on territories inhabited by the non-Serb population took place in the same manner throughout Bosnia and Herzegovina. This is also apparent based on the testimony of witnesses Mevlid Hadžić and Muharem Kurdić, who described the attacks on their village of Grapska (near Doboj) that started around 10 May 1992. These attacks began with shelling, and ended with the entry of soldiers into the village, the removal of villagers, the separation and removal of women and children to the free territory, and the detainment of the males. This was confirmed by the testimony of witnesses D and E who had been captured and taken away from their homes in Vojkovići. It should be noted that witness D was underage at the time.

138. Because the attack was directed at areas inhabited by the civilian population (downtown Sarajevo and the surrounding settlements - Hadžići, Ilidža, Kotorac, Semizovac), this Panel finds that the attack was widespread and directed against the civilian population.

b. The Attack was Systematic

139. The Panel based its conclusion that the attack was systematic on established fact No. 32. It follows from this fact that the attacks on certain settlements were prepared for a longer period of time. This is also apparent from various witnesses' statements, particularly the statements of protected witness A, Rešad Brdarić, Salko Zolj, Alisa Muratčauš, Aladin Badžić, Junuz Harbaš, Avdo Pizović, Hasan Šunj and the others who were present at the beginning of war in their apartments at different locations in the city of Sarajevo and its surroundings. Their statements indicate that a common policy of behavior toward civilians existed. The attacks on different settlements were launched in an identical or very similar manner – non-Serb inhabitants were initially given an ultimatum to surrender themselves and their weapons, an artillery attack would follow, subsequent to which infantry units would enter the neighborhoods and remove non-Serb inhabitants. They were then sent to various detention facilities where they were beaten, held in inhumane conditions, frequently deprived of their lives, and the men were frequently separated from the women and children. The only basis for such a treatment of the civilian population was

their ethnicity. The testimony of witness Edina Ceribašić-Begović particularly pointed to the systematic nature of the attack. This witness testified that during the period around 18 June 1992 she lived with her family in an apartment in Dobrinja. They watched their building every day to determine whether it had been vacated, so they also knew when they would be removed. Finally, on 18 June uniformed soldiers burst into their apartment and took them to the barracks in Lukavica.

c. The Attack was Directed against the Civilian Population

140. Contrary to the Defense submissions, the Panel considered it proven beyond a reasonable doubt that the widespread or systematic attack launched in the territory of the city of Sarajevo and its surroundings was directed against the non-Serb civilian population. This conclusion is confirmed by the established facts, from which it follows that targets of the attack were mostly civilian targets. It also follows from the testimony of the witnesses that the only difference between those who were obliged to surrender weapons to the army and those who were not, was their ethnicity; that is, the fact that they were non-Serbs or mostly Bosniaks. It further follows from the testimony of the witnesses that the only criterion and the reason for arrest was their ethnic background.

141. The Panel also dismissed the Defense submissions that the detainees in pavilion 2 of the KPD *Butmir* were not civilians. Counsel Rašević in his closing argument alleged that the prisoners had been detained by the army, subjected to security triage, and registered as prisoners of war, pursuant to which they had that status.⁵⁷

142. As prescribed under Article 50(1) of Additional Protocol I to the Geneva Conventions dated 12 August 1949 relative to the Protection of Victims of International Armed Conflicts (Protocol I) “*A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian*”. An interpretation of the referenced provisions in conjunction with Article 4(A) of the Third Convention shows that the following persons do not have the status of civilians: 1) members of the armed forces of a Party to a conflict, members of militias and voluntary corps of such armed forces; 2) members of other militias and other voluntary corps, including those of organized resistance movements that belong to a party to the conflict and are active outside or within their own territory, even if the

territory is occupied, provided that they fulfill all of the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war; 3) members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power....; 6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.” An interpretation of the foregoing in conjunction with Article 43 of Protocol I shows that the following persons do not have the status of civilians “...members of organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party...”

143. It follows from the testimony of the witnesses who were during the critical period detained on the premises of the KPD *Butmir* that the prisoners in question do not fall under any of the aforementioned categories, and therefore that they were civilians. In determining the status of these persons, the Panel took into account the testimony of a number of witnesses, including Junuz Harbaš, Munib Isić, Avdo Pizović, Hasan Šunj, Mušan Šunj, Suno Dupovac, witness „C“, Senaid Stupar, witness „E“, Almin Dželilović, Hasib Dželilović, Halid Aruković and Džemal Arnautović. All of these witnesses were detained in the KPD *Butmir* during the relevant period, and without exception testified that they had been arrested in their homes, that they were not armed or in uniforms when arrested. Furthermore, they had offered no resistance and were not members of any armed formation at the moment of their arrest. The only possible conclusion is that these individuals had the status of civilians. Furthermore, the civilian status of the persons detained in the pavilion of the KPD *Butmir* is derived from the fact and confirmed by numerous witnesses, that women and children were also detained on the premises of the KPD *Butmir*. Delka Jamaković and Edina Ceribašić testified that they had spent a certain period of time in the KPD *Kula*, while the witnesses C and D testified that they had been underage at the time of their detention in the KPD *Butmir*.

⁵⁷ See para. 42 of this Verdict.

144. The Panel does not exclude a possibility that there were some persons detained in the pavilion 2 of the KPD *Butmir* who did not have civilian status. For example, witness Mehmed Agić testified at the main trial that at the moment of his arrest he was a member of the Territorial Defense (TO), had military trousers and was armed with a *Scorpion* pistol. Witness Šemso Jašarević, who spent 34 days in the KPD *Butmir* during the relevant period, testified that at the time of his capture he was a member of the Patriotic League, 101st Brigade of the R BiH Army. According to this Panel, there is no doubt that these individuals were not civilians. Additionally, witness Edin Hidić testified that, when the attack was launched on the village of Grapska near Dobojo, the villagers offered resistance. Although he was not a member of the group that offered resistance on the day of their capture, the Panel holds that it is questionable whether this witness belongs to the category of civilians as defined in Article 4A (6) of the Third Convention. However, because the Panel has concluded that most of the persons detained in the KPD *Butmir* were unquestionably civilians, we determined not to consider it necessary to dwell on the status of a few individuals whose status is questionable. Pursuant to the holdings of the *Blaškić* Trial and Appeals Chamber⁵⁸, as well as *Kordić-Čerkez*⁵⁹ Appeals Chamber, “the presence within a population of members of resistance groups or former combatants, who have laid down their arms, does not alter its civilian characteristic”. Accordingly, this Panel holds that the presence of a few detainees in the detention facility of the KPD *Butmir* who did not have the civilian status during the critical period, does not undermine the essentially civilian character of the other detainees, the overwhelming majority of whom unquestionably had civilian status,

145. Therefore, the Panel found beyond a reasonable doubt that during the critical period a widespread or systematic attack targeted against the non-Serb civilian population in the territory of the city of Sarajevo took place, and that the civilians detained in pavilion 2 of the KPD *Butmir* had the character of civilians.

2. The Accused’s awareness of the Existence of Widespread or Systematic Attack

146. In establishing this essential element of the criminal offense of Crimes against Humanity, the Panel took into account the background and circumstances of both Accused, as well as other

⁵⁸ *Prosecutor v. Tihomir Blaškić*, IT-95-14-A, Appeals Judgment, 29 July 2004 (“*Blaškić*” Appeals Judgment), para. 113.

⁵⁹ *Prosecutor v. Čerkez*, IT-95-1 4/2, Appeals Judgment, 17 December 1994 (“*Čerkez*” Appeals Judgment), para. 50.

evidence that might affect the existence of this essential element. Particularly important were the statements of these Accused given during the main trial. The conclusion that they must have been aware of the attack follows from a conscientious analysis of their testimony.

147. Specifically, both Accused testified that they were aware of the deteriorated security situation and the overall atmosphere of tension in Sarajevo and its surrounding area in the spring of 1992, which resulted in their leaving the town. The Accused Lalović testified that he had hoped that the situation would improve. The Accused Škiljević had planned to leave Sarajevo for a long time. In the end, both the Accused actually left Sarajevo.

148. That the Accused Lalović was aware of actual unrest in the spring of 1992 follows from his awareness of the importance of “Kula”. He explained that it was “an important center” where Serb personnel gathered, and that even the Minister of Justice Momčilo Mandić had told him that if unrest continued they would organize the KPD.

149. The Accused Lalović communicated with detained persons. A number of witnesses characterized Lalović as a person who treated them fairly. The Accused himself testified that a large number of persons, who he knew were “essentially civilians”, had been brought there. Considering, his pre-war occupation, the Accused was certainly aware that these civilians were unlawfully detained, and that in fact, their detention constituted an integral part of the attack against the civilian population.

150. Moreover, both Accused are highly educated persons (Lalović with a post-secondary school education and Škiljević with the university education), intellectuals, and worked prior to and during the war in the field of corrections or penology. This Panel therefore concludes beyond a reasonable doubt that both Accused must have been aware of the political and security situation in the country, and also of the widespread or systematic attack against the civilian population. This attack could not have gone unnoticed, and the Panel concludes that they had to have knowledge and awareness of such an attack.

3. Knowledge of the Accused that their acts constitute or might constitute a part of the attack, more specifically, that there existed a nexus between the attack and the acts of the Accused

151. What the Panel did not find proven beyond a reasonable doubt is that the Accused, pursuant to their official capacities attributed to them under the Indictment, perpetrated the individual crimes charged; nor does a *nexus* exist between their acts and the attack. The Panel will analyze in detail the evidence which led to the conclusion that the Accused Radoje Lalović and Soniboj Škiljević, with the official capacities attributed to them under the Indictment, did not perpetrate the criminal offenses charged against them. For this reason, having relied on the principle of *in dubio pro reo*, the Panel acquitted the Accused of charges against them.

VIII. INCRIMINATIONS UNDER INDIVIDUAL COUNTS OF THE INDICTMENT

A. COUNT 1 AND 2 OF THE INDICTMENT - DETENTION OR OTHER SEVERE DEPRIVATION OF PHYSICAL LIBERTY IN VIOLATION OF FUNDAMENTAL RULES OF INTERNATIONAL LAW

152. Counts 1 and 2 of the Indictment charge the Accused Radoje Lalović and Soniboj Škiljević with the unlawful detention of non-Serb civilians on the premises of the KPD *Butmir*. As already established by the Panel in relation to each Accused and with regard to the charges against them, the period during which they performed the duty of warden of the KPD *Butmir*. In relation to Radoje Lalović, this is the period from late July or early August through 16 December 1992, whereas with respect to Soniboj Škiljević, this refers to the period between 16 December 1992 and mid-December 1995. Also, it is necessary to examine whether individuals were detained unlawfully on the premises of the KPD *Butmir*, and if so, whether the Accused, as wardens during the relevant period, can be found guilty of such detentions.

153. With respect to civilian detention, this Panel notes that such detentions may be justifiable during periods of war if they are carried out pursuant to Articles 42 and 43 of the Fourth Geneva Convention. However, as the Appeals Chamber noted in *Čelebići*⁶⁰, the detention of civilians is

⁶⁰ *Prosecutor v. Čelebići*, IT-96-21-A, Appeals Judgment, 20 February 2001 (“*Čelebići*” Appeals Judgment), para. 322.

unlawful in the following circumstances: „when a civilian or civilians have been detained in contravention of Article 42 Geneva Convention IV, *ie* they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary, and where the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where their initial detention may have been justified...”. A review of the evidence indicates that the detention of civilians at the KPD *Butmir* violated Articles 42 and 43 of Geneva Convention IV.

154. Ample evidence was presented by a large number of civilian detainee witnesses with regard to the unlawful detention. The testimonies of witnesses including Junuz Harbaš, Munib Isić, Avdo Pizović, Hasan Šunj, Mušan Šunj, Suno Dupovac, Senaid Stupar, witness C, witness E, Almin Dželilović, Hasib Dželilović, Mehmed Agić, Halid Aruković, Džemal Arnautović, Mevlid Hadžić, and Muhamed Hurić are of particular importance for the relevant period from early August 1992 to mid December 1995.

155. The Defense did not contest that a certain number of non-Serb civilians were detained on the premises of the KPD *Butmir*. However, the Defense did contest the nexus of the Accused to the unlawful detentions, and raised the question of whether the detentions were unlawful.

156. The Panel found no evidence in support of the Defense theory that the civilians were detained on the premises of the KPD *Butmir* for their own safety. In fact, after consideration of the testimonies of Junuz Harbaš, Avdo Pizović, Hasan Šunj, Mušan Šunj, Suno Dupovac, to the effect that each had been removed from his home and detained on the premises of the KPD Kula, while his wife and children remained at home, the Panel concludes that the purpose of the removal and detention was not to secure these persons out of an abundance of concern for their safety. Had it been otherwise, women, children and the elderly would have undoubtedly taken priority. The fact that the safety of the mentioned persons was not a motivating factor in the removal of persons from their homes, and the fact that their detention was carried out for the purpose of persecuting them exclusively on ethnic grounds, is also shown by the testimony of Edina Ceribašić Begović. This witness testified that when her building was systematically vacated, only “a one-legged old man and an old woman” were left in her building; had the evacuation been intended to improve the safety and security of the population, and the norms of international law relevant to the protection of

civilians at times of war, armed conflict or occupation were complied with, these individuals would have taken priority.

157. The Panel also rejected the Defense theory that the detainees were prisoners of war detained on the premises of pavilion 2 of the KPD *Butmir*. Specifically, as noted earlier,⁶¹ the Panel concluded beyond a reasonable doubt that the persons detained during the critical period in pavilion 2 of the KPD had the status of civilians. The Panel does not consider it necessary to repeat in this section its reasons for arriving at this conclusion.

158. Finally, the Panel concludes that the captured civilians detained during the relevant period on the premises of the KPD *Butmir* represented no threat to “the Detaining Power”. It follows from the statements of each of the witnesses that each had been arrested at their home, wherefrom they were escorted to Kula and detained there. Moreover, most of the arrested individuals had no weapons; those few who had had weapons at an earlier point in the conflict had surrendered them or had them taken away. The arrested individuals therefore posed no threat, particularly not to the armed army or armed police that actually carried out the arrests. It also follows from the witnesses’ testimony that a certain number of women, children and the elderly were detained in Kula throughout the period under discussion. These individuals undoubtedly did not represent a threat justifying their arrest and bringing it within the remit of Article 42 of Geneva Convention IV. Moreover, each of the witnesses testified to the fact that they never learned the grounds on which they were detained, that they were never brought before a court and did not receive any decision of a court or administrative body that would justify their deprivation of liberty, as required under Article 43 of Geneva Convention IV. Based on the above, there is no question that the individuals in question were detained unlawfully.

159. With this in mind, the Panel must next examine whether a connection between the Accused Radoje Lalović and Soniboj Škiljević and the detention existed, or whether, as submitted by the Defense, the Accused had only acted in their capacities as wardens in which capacity they maintained responsibility for the part of the KPD wherein prisoners served their terms pursuant to decisions of regular courts; and that they had no responsibility over persons detained in pavilion 2 of the KPD *Butmir*, these individuals remaining exclusively within the remit of the VRS and the

⁶¹ See paragraphs 140 -145 of the Verdict.

police. According to the Defense, pavilion 2 of the KPD *Butmir* was only “a service provider” that provided accommodation for the referenced persons for the army and the police, which was the purpose of the KPD.

160. Witness testimony from individuals who spent a time detained in the KPD *Butmir*, as well as documentary evidence submitted by both the Prosecution and the Defense, are of the greatest importance in establishing the foregoing fact.

161. All witnesses testified in a detailed and graphic manner about the beginning of the armed conflicts in their communities, their deprivation of liberty and the road they traveled to finally end up in the KPD *Kula*. What is common to each witness is the assertion that the persons who arrested and captured them were members of the army and the police. Moreover, these persons brought and handed them over to the premises of the KPD *Butmir*, where they were placed in the rooms of pavilion 2 and where they stayed for a length of time.

162. That the army and the military had some jurisdiction over the KPD *Butmir* even after its take-over and the formal start of the functioning under the jurisdiction of the Ministry of Justice and Administration in late July or early August 1992 is apparent from the testimony of witnesses Vule Govedarica, Momčilo Mandić, Nedo Pandurević, and Nedo Drašković et al.

163. In his testimony of 19 November 2009, Vule Govedarica, whom the Crisis Staff had assigned as a reserve police officer to the Police Station Kula at the beginning of war (after the KPD *Butmir* was taken over by the Ministry of Justice and Administration), and who was transferred to a guard post in the KPD *Kula* in late July 1992, testified that between April and July 1992 the seat of the Police Station Kula was in the building of the Kula prison, and that Vujčić and Tepavčević⁶² had their offices in the administrative building. After the Ministry of Justice took over the KPD the police moved to the other building. According to his testimony, prison management was responsible for individuals under investigation and convicted by regular courts. Non-Serb prisoners were a special category for whom he, as the prison guard and employee of the Ministry of Justice, did not know if they had decisions or legal grounds for their detention. According to the testimony of this witness, these persons were brought by the army or the police, and although they

had no jurisdiction over these persons, employees of the KPD were obliged to register their arrivals or departures when they were taken by the military to a hospital or to perform labor. According to this witness, the management of the KPD *Butmir* was required to know at all times the number of persons detained on the premises of the KPD, and location where these persons were at any moment. The witness testified that the state-level Commission for Exchange, led by Dragan Bulajić, was exclusively responsible for the exchange of non-Serbs, and that the KPD management or guards could not carry out any exchanges.

164. Witness Neđo Pandurević, who was a member of the PS *Kula* at the beginning of the conflict, and subsequently a guard in the KPD *Butmir*, testified that the army had exclusive jurisdiction over the “prisoners of war” detained in the KPD *Butmir*, that the army brought the prisoners in and took them away, that the state commission for exchange led by Dragan Bulajić was exclusively responsible for these persons, and that no one could propose, hire, or exchange any person without their order. The witness stated that the Minister of Justice, Jovo Rosić⁶³ used to visit the persons detained in the KPD *Butmir*, but only those who were under the jurisdiction of the KPD management (ie. convicted persons or persons under investigation) whereas with respect to the non-Serbs detained in the KPD *Butmir* he simply said: “I have nothing to do with these persons, these are not persons under our jurisdiction.”⁶⁴

165. Witness Neđo Drašković testified on 4 March 2010 that he, in his capacity of President of the District Court in Istočno Sarajevo during the relevant period until his appointment as a judge of the Supreme Court of the RS, also used to visit prisoners in *Kula*, but only those detained or convicted by regular courts. According to this witness, he did not visit some individuals under court martial jurisdiction who were detained in *Kula* and brought in or taken away by the army, solely because these persons were not under the jurisdiction of the Ministry of Justice.

166. The Prosecution attempted to impugn the credibility of witnesses Vule Govedarica and Neđo Pandurević, questioning the veracity of their statements that they were police officers in the PS *Kula* when the conflict first erupted. The Prosecutor referred to the Decision on assignment to

⁶² Radenko Vujčić, Commander of the police station *Kula*, Milenko Tepavčević, Chief of the Police Station. See Witness Miodrag Lalović, testimony dated 2 June 2011.

⁶³ Appointed Minister of Justice of Republika Srpska in 1993 after Momčilo Mandić.

⁶⁴ Witness Neđo Pandurević, testimony dated 16 June 2011, p. 35.

compulsory work number 03-16/93 dated 17 July 1993, alleging that it followed from the referenced decision that witness Govedarica was assigned to a compulsory work duty of a guard in the KPD *Butmir* as of 27 April 1992. After reviewing the referenced document (Exhibit O-1-3), the Panel has established that the date of his assignment as a guard under the compulsory work order was 24 July 1992. This is confirmed by the witness in his testimony, as well as by the pay-roll lists for the reserve police force in the PS Kula for May and July 1992 (Exhibits T-247a and T-247b), which also contain the name of witness Govedarica. The Prosecution attempted to impugn the credibility of witness Neđo Pandurević by presenting him with Exhibit T-250 (Decision of the Ministry of Defense, Ilidža Department, Section Kula No. 06-80-279/94 dated 18 May 1995) from which it would seem that Neđo Pandurević performed the duty of guard commander of the KPD *Butmir* since 1 May 1992. The Panel, however, has concluded that the KPD *Butmir* did not function during the referenced period under the jurisdiction of the Ministry of Justice and Administration. This fact was confirmed by the Decision itself issued by the Ministry of Defense (Exhibit T-79 .establishing the KPD *Butmir* on 30 July 1992). Whether or not this witness was a member of the police or the army, given that he was not a guard in the KPD *Butmir*, is not a fact important for the establishment of liability of the Accused Lalović and Škiljević.

167. Given that he was acting as Minister of Justice at the relevant time, witness Momčilo Mandić would have undoubtedly been aware of the status of persons detained in the KPD *Butmir* and the jurisdiction they were under. He testified that after taking over the KPD *Butmir* in August 1992 the Ministry of Justice established an investigation department within the KPD in which persons were detained pursuant to the decisions of investigative judges and the then-applicable CPC, as well as a second department for the detained persons who were serving their sentences after receiving final court decisions. In addition to these two categories of persons, at the time when the Ministry of Justice took over the KPD, there was a group of persons whom this witness calls in his testimony the “prisoners of war.”⁶⁵ These prisoners were interned in the D-2 building of the

⁶⁵ When cross-examined, the witness clarified that under prisoners of war he implied: “... persons who were under the exclusive jurisdiction of the military authorities.” This interpretation clearly does not correspond to the term of prisoners of war as it is used in the Geneva Conventions and throughout international law. However, the witness was neither invited nor had the required professional education to analyze who should be considered a prisoner of war, he rather presented what he knew about the events in the KPD *Butmir*. Therefore, the term „prisoner of war“, as used by the witness, does not mean that the Panel has accepted such categorization of the persons detained in the D2 pavilion of the KPD. To the contrary, the Panel has already decisively established that the detained persons were civilians by their character. The testimony of witness Mandić was, however, evaluated as relevant to the establishment of whether

KPD *Butmir* “under the jurisdiction of the army, that is, the military judiciary, military security and the exchange commission.”⁶⁶ The witness further testified that the army had placed these persons into the KPD *Butmir* and that the Corps Commander had an exclusive authority over these persons. Their release from the KPD depended on a decision by the military authorities, because they were exchanged at the Government level of inter-entity exchange commissions, whereby detainees were taken by soldiers to be exchanged. While employees of the Ministry of Justice, guards and personnel of the KPD *Butmir* guarded these persons inside the KPD, ensured that nothing happened to them and that no one abused them, these prisoners were under the exclusive jurisdiction of the army.

168. Witness Đorđe Faladžić, who was a deputy of warden Soniboj Škiljević in the KPD *Butmir* after 16 December 1992, also spoke about three categories of persons detained in the KPD *Butmir*. One category of these detainees was prisoners of war, who were brought in by the army and the military police. This witness also testified military security of the Sarajevo-Romanija Corps was exclusively responsible for these persons, while he and Soniboj Škiljević, as part of the civilian structure, were instructed to act in the service of these bodies in light of the war.

169. Witness Fadil Kreho, the last of the pre-war wardens of KPD *Butmir*, whose testimony the Panel found objective, sincere and convincing, described the situation in the *Sarajevo* Central Prison. He was appointed warden there in late 1992 after being unable to return to his old position of warden of the KPD *Butmir* after the war broke out. Although the Central Prison is not the subject of charges against the Accused Lalović and Škiljević (since it was held by the Army of RBiH during the critical period) the Panel considers Fadil Kreho’s testimony relevant to the general context of the establishment of penal-correctional institutions in BiH territory, which were undoubtedly similar on both sides. Specifically, in describing his own experiences in the *Sarajevo* Central Prison, this witness testified that, just like in the KPD *Butmir*, there were persons serving their sentence and detainees during the investigation, but the top floor of the KPZ was given over to the army, the police, and their detainees. The Central Prison management was entirely separate

civilian or military authorities were responsible for the group of persons detained in the pavilion D-2 of the KPD *Butmir*. This issue is of a decisive importance for the establishment of liability of the Accused.

⁶⁶ Witness Momčilo Mandić, testimony dated 23 May 2011, p. 14.

from them, and members of the army and police had no jurisdiction only over detainees held on the top floor of the Central Prison.

170. The Order of the Command of the Sarajevo-Romanija Corps dated 16 December 1992 number 01/2-243/92 (Exhibit O1-28) also shows that the category of persons not under the jurisdiction of KPD *Butmir* management were detained on the premises thereof. According to this order, the employees and workers at penal-correctional institutions holding prisoners of war were instructed not to exchange these prisoners without approval from the responsible president of a higher court and the command of the responsible corps. The referenced order explicitly stated that it applied to the KPD *Butmir*.

171. Exhibits T-206 through T-210 reveals that approval to take the detainees from the KPD *Butmir* to perform labor, fortify defense lines⁶⁷ or other facilities for combat activities and perform other work in daily shifts,⁶⁸ including the organization of combat posts, construction of facilities and digging of trenches,⁶⁹ construction of trenches and traffic roads,⁷⁰ or perform other work in the 3rd Infantry Battalion,⁷¹ came exclusively from members of the military authority - General Stanislav Galić, Colonel Marko Lugonja, Lieutenant Colonel Veljko Stojanović.⁷² Moreover, these requests were only delivered to the KPD *Butmir* only after approvals by one of the military authorities had already been secured.

172. The testimony of most witnesses confirmed these facts: (1) that members of the army and the police were bringing the detainees to the premises of the KPD *Butmir*, (2) that members of the army took prisoners to perform labor, whereas the guards in the KPD possibly escorted these prisoners only as far as the prison gate, (3) that no one from the civilian authorities visited these prisoners, except for the ICRC⁷³ on several occasions, (4) that they were exchanged under the supervision of UNPROFOR,⁷⁴ and (5) that they were registered in the ICRC lists as prisoners of

⁶⁷ Exhibit T-206 (Request to take prisoners from the Kula prison dated 14 January 1993).

⁶⁸ Exhibit T-207 (Request of the Command of the I Battalion dated 16 January 1993; Request of MP 7512 dated 1 February 1993; Request of MP 7512 dated 4 February 1993).

⁶⁹ Exhibit T-208 (Request of the Command of the I Battalion dated 24 January 1993).

⁷⁰ Exhibit T-209 (Request of the Command of the I Battalion dated 2 February 1993 and Request of MP dated 8 February 1993).

⁷¹ Exhibit T-210 (Request for prisoners labor).

⁷² This will be addressed in greater detail with respect to Counts 1d and 2d of the Indictment.

⁷³ Witnesses Edin Hidić testimony; Witness Mirsad Plećan testimony.

⁷⁴ See e.g. the testimony of witnesses Mušan Šunja, Delka Jamaković, Witness C, Fikret Siró.

war. Thus the Panel is satisfied that the testimony of witnesses Govedarica, Pandurević, Mandić, and the Accused Lalović and Škiljević is confirmed.

173. Finally, keeping in mind the foregoing, the Panel applied the standards established by the Čelebići Trial Panel, pursuant to which it evaluated whether the Accused were liable for the unlawful detention of civilians. A determination of guilt for the crime of unlawful detention requires more than conscious participation in a general system or operation based on which persons are detained. According to Čelebići Trial Panel, responsibility for committing an offense of unlawful confinement is properly allocated to individuals who (1) actually place a person in detention without reasonable grounds to believe that he constitutes a security risk; or, (2) have some powers over the place of detention and accept a civilian into detention without knowing that such grounds exist; or, (3) have the power or authority to release detainees, and fails to do so despite knowing that no reasonable grounds for their detention exist⁷⁵.

174. The Panel was unable to conclude beyond a reasonable doubt based on a conscientious evaluation of the evidence that the Accused Lalović and Škiljević, during the respective periods when each performed the duties of the KPD warden, were responsible for the internment of persons on the premises of pavilion 2 of the KPD *Butmir*, for their reception in the referenced facilities. Nor could the Panel conclude that they had the power to release the prisoners but failed to do so. In fact, a high degree of certainty exists that the military authorities had exclusive jurisdiction over these persons. For this reason, pursuant to the principle of *in dubio pro reo*, the Panel acquitted both Accused of charges for unlawful detention as described under Counts 1 and 2 of the Indictment.

B. COUNT 1(A) AND 2(A) OF THE INDICTMENT - OTHER SIMILAR INHUMANE ACTS COMMITTED WITH THE INTENT TO INFLICT GREAT SUFFERING OR SERIOUS VIOLATION OF BODILY OR MENTAL INTEGRITY OR HEALTH

175. By the charges described in Counts 1(a) and 2(a) of the Indictment, the Prosecution attempted to prove that conditions in the KPD *Butmir* were unhygienic and that civilian prisoners were denied access to adequate and timely medical care. All these conditions in their entirety may be qualified as the criminal offense under Article 172(1)(h), as read with subparagraph (k) of the CC of BiH. The Prosecution also attempted to prove that the Accused Lalović and Škiljević were

guilty of keeping the civilians detained in such conditions, which resulted in a deterioration of the health of some prisoners and the death of others.

176. The Prosecution introduced testimony from a large number of witnesses and presented a large body of documentary evidence with regard to these counts of the Indictment.

177. The Defense teams for both Accused agreed that the detention conditions, with respect to the provision of food and hygienic accommodation, were not satisfactory, but argued that the army was responsible for meeting the dietary and hygiene needs of the detained non-Serbs. During the periods when they respectively performed their function of warden in the KPD *Butmir*, the Accused, to the best of their abilities, worked to improve living conditions in the KPD.

178. The Panel examined the actual conditions in the KPD *Butmir*, whether the rooms were overcrowded as described under the Indictment, whether there was any heating during the winter, whether the detained persons were famished, deprived of a possibility to meet their hygienic needs, and whether medical help and care were provided to the persons who needed it.

179. Both the Prosecution and the Defense examined a number of witnesses and presented ample documentary evidence with regard to these circumstances, which was evaluated by this Panel in their entirety.

180. Based on an analysis of the testimony of all witnesses detained on the premises of the KPD *Butmir* during the period relevant, whose statements are of the greatest importance to the establishment of the Accused's guilt, the Panel concludes that the detention conditions did not satisfy the minimum requirements prescribed under Article 85 of Geneva Convention IV.

181. In relation to the allegations under Count 1(a) of the Indictment during the relevant period from late July to early August 1992, the Panel notes that testimony of witnesses Junuz Harbaš (detained from late June/early July through 16 December 1992), Munib Isić (detained from 21/22 June through 8 February 1993), Avdo Pizović (detained from 26/27 June through 11 December 1992), Hasan Šunj (detained from 24 June through 8 February 1993), Mušan Šunj (detained from 23/24 June through 9 February 1993), Suno Dupovac (detained from 24/25 June through December

⁷⁵ *Čelebići Appeals Judgment*, para. 342.

1992), Senaid Stupar (detained from 26 June through 29 August 1992), Almin Dželilović (detained from 24 June through 22 November 1992), Mehmed Agić (detained from 10 August 1992 through 15 June 1993), Halid Aruković (detained from 29 November 1992 through August 1993), Hajrudin Karić (detained from 11 July through 28 August 1992), and the Prosecution Exhibits T-100 and T-101 are important for the determining the conditions in the KPD *Butmir*.

182. Although it appears that witnesses Mehmed Agić and Halid Aruković were prisoners of war, the Panel considered their testimonies in relation to the general conditions of the KPD *Butmir*, as they were detained in the same pavilion of the KPD as the non-Serb civilians.

183. The statements of certain witnesses whose detention in the KPD *Kula* was extended beyond 16 December 1992⁷⁶ - Edin Hidić, Izudin Husaković, Mevlid Hadžić, Muharem Hurtić, Fadil Vlajčić, Fikret Sirčo, Hazim Hadžihasanović, Witness F, Almir Garaplija and Marijan Malešević - are relevant to the determination of the conditions in the KPD *Butmir* during the period relevant to Count 2(b) of the Indictment.

1. Internment, hygienic and food supply conditions during the period from late July/early August 1992 through 16 December 1992

184. Witness Junuz Harbaš testified that at the time when he was brought to the KPD *Kula* in late June or early July 1992, during which period it was under the full jurisdiction of the army and the police, claimed that the rooms in which the non-Serb detainees were interned were overcrowded, containing more than 50 persons per room, and that non-Serbs held in these rooms slept on a tile floor. The Defense contested this assertion (that prisoners slept on tile floors) throughout the trial. The Defense argued that the detention facility had a parquet floor. However, witness Mušan Šunj and witnesses D and E also described the room in which they were detained upon their arrival in *Kula* as having tile floors. The Panel found no reason to doubt the sincerity of these witnesses, although their statements were contrary to the other evidence adduced. A reasonable explanation in support of the assertions that the rooms where the civilians were detained upon their arrival in the

⁷⁶ The testimonies of Munib Isić, Hasan Šunj, Mušan Šunj, Mehmed Agić, Halid Aruković cover the period prior to 16 December 1992, as well as the period relevant to the Indictment that follows.

KPD *Butmir* had tile floors ensues from witness Harbaš's statement made during the investigation.⁷⁷ The witness stated that the room in which they were placed upon their apprehension to Kula served as a dining room. The Panel notes that this fact is of no importance to correctly establishing of the state of facts, but it was taken into account by the Panel in evaluating credibility of the witnesses, whose statements the Panel regards as sincere, objective and convincing, finding no reasons for which the witnesses would not want or wish to tell the truth,. The Panel notes, in this regard, that internment in the room that resembled a dining room was obviously related to the period when the Accused Lalović was not a warden yet. According to the testimony of witness Harbaš, the conditions subsequently improved, so around 20 prisoners were transferred to a room where they had several mattresses and a couple of military blankets The detainees could lay down, and the guards would let them go to a toilette where they could wash themselves. The food consisted of one meal, namely a soup with a slice of bread. The Panel notes, however, that these improvements were insufficient to bring the conditions of these detained persons into compliance with the Geneva Conventions.

185. Witness Avdo Pizović described similar detention conditions in Kula. He stated that the detainees were interned in overcrowded rooms (51 persons in his room), that rooms had soft-wood flooring strips and insufficient number of beds, resulting in four men sleeping on one bed. The hygienic conditions were poor and he had no bath for 7 months. The detainees were given a bucket for relieving themselves, and the food was such that detainees suffered from dysentery. This witness was detained during the same period as the late Izet Ramić for whom he stated that "he died of poisoning and all turned green."

186. It also ensues from the testimony of witness Munib Isić that the conditions of detention were initially bad, but improved over time when compared to conditions at the beginning of their detention. This witness testified that the food improved in November, December, and January, that during the winter period they had a possibility to wash their faces and hands and eventually they could use a toilette more frequently. In spite of these improvements, the Panel, based on the testimony of this witness, concludes that hygienic conditions never reached a satisfactory level.

⁷⁷ Exhibit T-9 (Witness Examination Record for Junuz Harbaš number KT-RZ-42/05 and KT-RZ-33/05 dated 9 March 2006).

Given the period he spent detained in the KPD *Butmir*, this witness was also there when Izet Ramić and Bahrudin Bećirević died,⁷⁸ and he stated that both suffered from food poisoning and died.

187. The statements of witness Hasan Šunj, Mušan Šunj and Suno Dupovac, who were brought to the KPD *Butmir* with a group of men from Hadžići in late June 1992 (like the aforementioned witness Avdo Pizović), are consistent with the foregoing witnesses description of poor detention conditions at the KPD. Witness Hasan Šunj testified that a room in which 26 men were interned was empty when they arrived there, but that on the following day mattresses and blankets were provided. Although they had access to water and could briefly use a toilette, there were no provisions made to allow the prisoners to bathe, and that the food was bad yet better than in the sports center in Hadžići where he had been initially detained. It ensues from the testimony of witness Mušan Šunj that initially 100-120 men were interned in an empty room, without beds and blankets and even without light. However, some 6-7 days later, the elderly were released and around 50 men remained which improved conditions slightly. The food consisted of a meal per day, and suppers were introduced subsequently, although they were insufficient to meet the dietary needs of the prisoners. Witness Suno Dupovac was brought to Kula also with a group of over 200 civilians from Hadžići. He also was initially interned in an empty room with around 70-80 persons, where they slept on the floor and lacked blankets. He was subsequently transferred to another room, where he stayed until December 1992. There were around 10-12 men in that room, almost all of whom had beds with mattresses. Even though they could not use a toilette for the first month upon their apprehension, after a couple of months they were allowed to do so.

188. Witness Almin Dželilović testified that the detention conditions in Kula were bad, that there was no heating, that during his 5-month detention he had only one bath and that the food was bad consisting of two meager meals a day. The only improvement of conditions consisted of a reduced number of persons held in his room after the prisoner exchange and the permission they received, after three months, to use the toilette. This witness was detained at the same time as the deceased Izet Ramić, who the witness stated had died of hunger and dehydration.

189. Hajrudin Karić also testified about the poor conditions in Kula. He stated that he was detained in a room with an insufficient number of beds, so that two persons had to sleep in each

⁷⁸ See Count 2(a) of the Indictment.

bed. They were allowed to use the toilette as a room. The food was bad, although it improved in late July 1992, after which point prisoners received two meager meals a day.

190. Prosecution Exhibits T-100 and T-101, which are lists of persons detained in certain rooms (without indicated dates but undoubtedly originated from the period relevant to the indictment), confirms the overcrowding at the prison. The Panel notes that some of the persons listed therein were examined as witnesses. The referenced lists also show that between 20 and 30 civilians were interned on these premises.

191. Pursuant to the foregoing, the Panel established beyond a reasonable doubt that the conditions in the KPD *Butmir* from late July-early August 1992 through 16 December 1992 failed to satisfy the minimum standards whose compliance is an imperative pursuant to Article 85 of the Fourth Geneva Convention.

2. Internment, hygienic and food supply conditions during the period from 16 December 1992 through mid December 1995

192. The Panel also examined the charges against Soniboj Škiljević, who acted as warden of the KPD *Butmir* from 16 December 1992 to mid-December 1995.

193. The largest group of non-Serbs detained on the premises of the referenced KPD during this period was a group from the village of Grapska (near Doboj). After being deprived of liberty in May 1992, these prisoners spent several months in the Manjača and Batković camps. They were later transferred to the KPD *Butmir*. In addition to the referenced group, some individuals from Sokolac, Pale and some other locations were also detained in the KPD *Butmir* during this period. The Panel considered these individuals most qualified to describe the situation in the KPD *Butmir*, given that they were detained therein and were thus eye-witnesses to the charged crimes,

194. The statements of the referenced witnesses are largely consistent with the testimony of the witnesses who were detained in the KPD *Butmir* during the August-December 1992 period. Witnesses Izudin Husaković, Mevlid Hadžić, Muharem Hurtić, who were in a group brought from the Manjača camp, and Fadil Vlajčić, Fikret Sirčo, Safet Gagula, Hazim Hadžihanović, witness F and others, all discussed overcrowding in the KPD *Butmir*. They slept on mattresses and blankets, had insufficient food which mostly consisted of two meals, and endured poor hygienic conditions; although they had the opportunity to use toilettes. Some witness testified that they had the

possibility of bathing with cold water, and about the lack of heating during the winter months. These conditions are undoubtedly unsatisfactory. However, witness Safet Gagula noted that conditions in *KPD Butmir* were better than the conditions in the three camps he had been detained in previously. According to witness Edin Hidić, the conditions were bearable.

3. Medical help provided to the detained civilians during the period from late July/early August 1992 through mid December 1995

195. The Prosecution alleged that the detainees lacked access to medical care and protection, or that the access prisoners were afforded was inadequate.

196. All of the witnesses who spent a certain period of time detained in the *KPD Butmir* testified about these charges. However, after analysis of their testimonies and a review of the documentary evidence, the Panel finds itself unable to conclude that the Prosecution proved this allegation beyond a reasonable doubt.

197. In fact, witnesses Junuz Harbaš and Munib Isić, who were wounded during their detention in the *KPD Butmir*, were taken to the Kasindo hospital and provided with medical care.

198. Witness Senaid Stupar testified that during his detention in Kula medical help was insufficient, but that on a couple of occasions a man came and introduced himself as a doctor, even though the detainees had heard he was a veterinarian. This man brought the prisoners medicine. The witness was present when Izet Ramić who subsequently died was brought to the prison (after being beaten in Hadžići), and complained of pains. The witness does not recall Ramić being taken to the hospital, but stated that Ramić had been given medicine in Kula.

199. Witness E also testified about a physician named Trapara, allegedly a veterinarian, who gave medicine and examined detainees when they needed medical help. Witnesses Džemal Arnautović, Mehmed Agić and Mevlid Hadžić testified that physician Trapara examined the detainees and administered medication. Witnesses Arnautović and Hadžić personally requested medical help from Trapara, which they received. Witnesses Safet Gagula and Muhamed Hurtić also testified that the veterinarian performed the duties of a physician. According to witness Mujo Kalkan, on one occasion when his blood pressure dropped he was taken to the Kasindol hospital where he was given medication.

200. Although it cannot be concluded from the testimony of these witnesses that medical help was adequate, particularly in light of their doubts that Trapara was in fact a veterinarian, it is clear that the detainees did have at least limited access to medical care, and that the medications administered to them were sometimes helpful.

201. In establishing this fact, the Court particularly evaluated Defense Exhibits O-2-44b, O-2-44c and O-2-44d (data about the medical help provided during the period relevant to the Indictment, submitted by the Clinical Center Istočno Sarajevo). It is obvious from this information that a large number of persons who were detained in the KPD *Butmir* during the critical period were provided with medical care on a number of occasions. Exhibit O-2-44b indicates that the injured party Bahrudin Bećirević was taken four times to the Kasindo Hospital during 1993, and witness Mihrudin Begović was taken three times during 1994.

202. Witness Senaid Stupar testified that medication was administered to Izet Ramić, and that Ramić had arrived at Kula with pains as a consequence of the beatings he had previously received. Witness Mušan Šunj stated that witness Bahrudin Bećirević arrived at Kula with wounds on his hands, and that he probably died as a result of infection and sepsis.

203. The Panel considered it proved beyond a reasonable doubt, that Izet Ramić, Bahrudin Bećirević and Mihrudin Begović died during their detention in the KPD *Butmir*. The Defense did not contest this fact. However, because the cause of death was not established for any of these parties, the Panel is unable to conclude beyond a reasonable doubt that their deaths were a result of the conditions in the KPD *Butmir*. The Panel finds itself, after a conscientious evaluation of the evidence, unable to accept the Prosecution's argument that these persons, along with other detainees, were not provided with medical care.

204. The Panel was unable to establish beyond a reasonable doubt that the injured party Mirsad Zečević was detained at all in this KPD during the critical period. Specifically, the only witness who mentions the injured party Zečević as the person who took ill and died ten days later is witness Muhamed Hurtić. Because no other piece of evidence exists to corroborate either the presence or the death of this individual, the Panel could not find this fact established beyond a reasonable doubt.

4. Conclusion

205. Because the Panel was unable to conclude beyond a reasonable doubt that the Accused Lalović and Škiljević had jurisdiction over the wing of the KPD where non-Serb civilians were detained, the Accused could not be found guilty of the foregoing charges, despite the fact that the Panel did establish that the civilians were detained in inhumane conditions. The Panel does draw a general conclusion based on the analysis of the contents of statements of the examined witnesses, held in the KPD *Butmir* during the period when the detainees were under the jurisdiction of the army and the police, but remained detained in pavilion 2 of the KPD after the KPD was taken over by the Ministry of Justice in late July or early August, and the testimony of the witnesses brought to the KPD *Butmir* from the other camps (Manjača, Batković) from 1992 onwards, that conditions in the prison improved during the period covered by the Indictment, inasmuch as prisoners were allowed to use toilettes, the number of persons in rooms was reduced, and the quality and quantity of meals improved. The Panel emphasizes, however, that meals were still unsatisfactory, in terms of quantity and quality, as a result of which detainees lost 10 to 40 kg on the average (depending on the period of time spent in detention). However, because a number of persons were detained in other detention facilities, sport halls in Hadžići or Pale, or other camps like Manjača or Batković, where the conditions were worse than the KPD *Kula* (as a number of witnesses testified) before being brought to the KPD *Kula*, the significant loss of weight cannot be exclusively attributed to the conditions of detention in this detention facility. Additionally, as explained earlier regarding the death of certain persons mentioned in the Indictment, the Panel was unable to establish beyond a reasonable doubt that the deaths alleged in the Indictment resulted from the conditions that existed in the KPD *Butmir*. Moreover, despite improving the conditions in which the detainees were held, the Panel notes that living conditions in KPD *Kula* remained unsatisfactory. The Accused despite having no jurisdiction over the civilians detained in pavilion D-2 of the KPD *Butmir*, used the powers afforded to them as wardens of the KPD to the extent possible to improve, however slightly, the position of the detainees. This did not go unnoticed by the detainees. To this end, witnesses Avdo Pizović (regarding the Accused Lalović), and Delka Jamaković (regarding Škiljević) stated that the Accused used to bring them cigarettes. A number of the witnesses also stated that they felt safe and protected in the presence of the Accused.

206. Therefore, even though the Panel established beyond a reasonable doubt that the conditions in the KPD *Butmir* did not satisfy the requirements set forth in Article 85 of Geneva Convention IV,

the Panel does not consider it proven beyond a reasonable doubt that the Accused were responsible for the prison conditions. As a result the Panel hereby acquits the Accused of the charges described under Counts 1(a) and 2(a) of the Indictment by applying the principle of *in dubio pro reo*.

C. COUNTS 1(B) AND 2(B) OF THE INDICTMENT - DEPRIVING ANOTHER PERSON OF HIS LIFE (MURDER)

207. Accused Radoje Lalović and Soniboj Škiljević are charged under Count 1(b) of the Indictment with the murder of 38 persons from the Kasindolska Street who were in May 1992 brought to the premises of the KPD *Butmir*, where they stayed for several days, and who were, on an unspecified day in the same month, taken out by an unidentified person and deprived of their lives at an unknown location.

208. The Panel refers to 56 through 80 of this Verdict, related to the period during which the KPD *Butmir* functioned under the jurisdiction of the Ministry of Justice and Administration, that is, during which the Accused performed the function of warden. Recalling that the KPD *Butmir* did not function during May 1992 under the jurisdiction of the Ministry of Justice, and that at the time of the alleged murders the Accused were neither wardens nor deputy wardens, the latter position not yet having been brought into existence, the Panel decides to acquit the Accused of charges for the acts described under Count 1(b) of the Indictment.

209. The Panel considers it necessary to refer to the evidence supporting the notion that the capture and murder of persons from Kasindolska Street took place exactly in May 1992. The Panel evaluated the testimony of witness Rešad Brdarić, the only surviving person from the group of 38 persons arrested in the Kasindolska Street. He testified that he, together with his neighbors from Kasindolska Street, were arrested on 14 May 1992, and that he and his neighbors were taken together to the KPD *Butmir*. This witness was held in the KPD *Butmir* until 21 May 1992, at which point he was exchanged. According to his testimony, the other 37 persons captured on 14 May 1992 were alive and healthy at that time.

210. His testimony is confirmed by the duty roster of the KPD *Butmir* (Exhibit A-O-1) which shows that on 14 May 1992 a total of 38 persons were apprehended and taken to the premises of the SJB *Kula* that was located within the compound of the pre-war KPD *Butmir*, the very same persons

arrested in the Kasindolska Street. Exhibit T-104,⁷⁹ also indicates that individuals arrested on Kasindolska Street were brought to the KPD *Butmir* on 14 May 1992, where they were held for a certain period of time.

211. Defense Exhibit O-2-6, (p. 77 of the *Dnevni Avaz* newspaper dated 16 October 2009) – obituary list published for the persons from the Kasindolska Street - that these arrested individuals were killed on 25 May 1992. This is supported by the testimony of Božo Radović, Milenko Tepavčević, Neđo Pandurević, and the Accused Soniboj Škiljević himself, who all confirm that the deprivation of liberty of the persons from the Kasindolska Street, their departure from the KPD *Butmir*, and their subsequent murder, took place in May 1992.

212. Based on this evidence, the Panel was unable to conclude that the Accused were guilty of the charged acts.

213. With respect to the charges under Count 2(b) of the Indictment, the Panel concludes that, for Accused Soniboj Škiljević to be found guilty for the murder of civilians Kasim Hurtić and Munever Hidić, he had knowledge that the unlawfully detained civilians were taken away from the KPD *Butmir* for the purpose of murdering them. The Panel concludes that the Prosecution failed to prove this beyond a reasonable doubt.

214. The testimony of witnesses Izudin Husaković, Mevlid Hadžić, Edin Hidić and Muhamed Hurtić confirms that Kasim Hurtić, who was detained with them on the premises of the KPD *Butmir*, was killed. However, witness Muhamed Hurtić stated that Kasim Hurtić was killed from a pistol by a soldier while he performed labor in the *Slaviša Vajner Čiča* barracks, immediately after the soldier asked “Who among you is not afraid to die”. The Panel found the testimony of this witness compelling, based on the manner in which he described the incident and the level of detail he provided. The Panel thus concluded that Kasim Hurtić was not taken away from the KPD *Butmir* to be killed, but instead to perform labor. The Panel therefore concludes that the Accused Soniboj Škiljević, who was not present during this incident and has no connection with the soldier who

⁷⁹ T-104 (List of the missing persons from the Kasindolska St. dated 29 May 2005)

killed Hurtić, cannot be found guilty of this crime; the Panel concludes that the Prosecution failed to prove that Accused Soniboj Škiljević knew that Hurtić was removed in order to be killed.

215. With respect to the circumstances of the murder of Munever Hidić, which occurred while he was detained in the KPD *Butmir*, the Panel considered the statements of witnesses Mirsad Plećan and Mevludin Hadžić. In their testimony which the Panel found persuasive, these witnesses stated that Munever Hidić was deprived of his life at Mojmiilo upon his attempt to flee. It follows from the foregoing that Munever Hidić was not taken away from the KPD *Butmir* to be killed. Had this been established, the Panel would have examined in greater detail the guilt of the Accused Soniboj Škiljević with regard to the referenced incident.

216. In light of the foregoing, and considering the dearth of evidence presented to the effect that the Accused Soniboj Škiljević knew or had reason to know that the victims Kasim Hurtić and Munever Hidić were taken from the KPD *Butmir* to be killed, the Panel acquitted this Accused of the guilt for the charges described under Count 2(b) of the Indictment.

D. COUNT 1(C) AND 2(C) OF THE INDICTMENT- TORTURE

217. With respect to Counts 1(c) and 2(c) of the Indictment, the Prosecution alleged that civilians detained in KPD *Butmir* were beaten and abused by the guards, who were members of the police and the army, that this abuse amounted to torture as a Crime against Humanity, and that the Accused were guilty for the torture.

218. The Court concludes that detained non-Serb civilians were beaten and abused on the premises of the KPD *Butmir* between 1 May 1992 and mid December 1995. However, based on the testimony of the witnesses, the beatings and abuse were most intensive during the period when the KPD *Butmir* did *not* function under the jurisdiction of the Ministry of Justice. The Panel is unable to convict the Accused for the acts occurring prior to their employment. With respect to the beatings witnesses A, Salko Zolj, Džafer Turković, Husein Ramović, Dervo Bihorac, Alija Durić, Mirsad Čerkez, Aladin Badžić, Dubravko Smolčić and Ahmo Fako were subject to, the Court notes that they occurred during a period the Accused Lalović was not acting as warden of KPD *Butmir*.

219. Witnesses A, Salko Zolj and Aladin Badžić were directly examined as witnesses. Witness A and Salko Zolj were brought to the KPD *Butmir* on 12/13 May, where they stayed for around 10 days, while witness Aladin Badžić was detained in the same KPD between 17-23 June 1992.

According to the testimony of these witnesses/victims, the abuse they experienced occurred during a period of time when neither of the Accused was a warden of the KPD. The Court infers from the testimony of Witness Aladin Badžić, who testified to the beating of Mirsad Čerkez, that it occurred during the period of the witness's detention in the KPD *Butmir*. Further, witness Rešad Brdarić, who was detained in the KPD *Butmir* during the period from 14 May through 21 June 1992, testified that Džafer Turković, Dervo Bihorac, Husko Ramović and Alija Durić were beaten during the time period that he was detained in the KPD, and witness Suvad Korjenić, who was detained for 21 days in the KPD *Butmir* during May 1992, testified that Dubravko Smolčić received the heaviest beatings during this detention period. Witness Ahmo Fako testified that he was detained in KPD *Butmir* between 17 June and 1 July 1992, and that he was beaten during this period.

220. The Panel notes that some of the witnesses' statements indicate that a number of victims were beaten or could have been beaten during the period from late July-early August 1992 through 16 December 1992, a period relevant to the establishment of guilt of the Accused Radoje Lalović within the charges under Count 1(c) of the Indictment.

221. Witness Nezir Huruz, who was detained on 8 July 1992 and spent 2 months detained in the KPD *Kula*, testified that while he was detained Zlata Čaušević and her husband Adil were taken for interrogation,⁸⁰ and that upon their return to the room they had visible injuries as a result of beatings. According to this witness, "they only tumbled down on the bed", and Zlata Čaušević was covered with bruises.

222. Although these beatings may have occurred while Accused Lalović was a warden of the KPD, no evidence exists to confirm this beyond a reasonable doubt. In fact, this allegation is based on the testimony of witness Nezir Huruz, who had spent almost a month in the KPD *Butmir* prior to Accused Lalović's assumption of duties as warden. The Prosecution, however, failed to clarify the period during which this witness believed this beating to have taken place. As a consequence, the Panel is unable to establish beyond a reasonable doubt that the beating of Zlata and Adil Čaušević took place during the period while the Accused Lalović served as warden. Keeping in mind the fact that other beatings described under Count 1(c) clearly occurred during the period prior to the Accused Lalović serving as warden, and without addressing the elements of the criminal offense

⁸⁰ Zlata Čaušević and Adil Čaušević beatings are relevant to Count 1(c) of the Indictment.

and the existence of guilt of the Accused in great detail, the Panel acquitted the Accused of charges for the acts described under this Count of the Indictment. The Accused Soniboj Škiljević was also acquitted of guilt for the referenced acts given the earlier finding of the Panel that the function of deputy warden did not exist at all during 1992.

223. With respect to the acts described under Count 2(c) of the Indictment relevant to the issue of guilt of the Accused Škiljević, the main evidence adduced to support the theory of the Accused's guilt were the statements of the witnesses Josip Sogović, Marijan Malešić, Mirsad Plećan, Muhamed Hurtić and Šemsudin Jašarević.

224. The witnesses mentioned above testified to the fact that the non-Serb detainees were also beaten during 1994. Witness Muhamed Hurtić testified that beatings did not occur on a daily basis, but were periodically repeated. He remembers that guards Milinković, Gvozden Šarac, and one Lala once beat prisoners for 2 hours. Witness Šemsudin Jašarević, who was detained in Kula for 34 days as a member of the Army of RBiH, also recalled beatings that he experienced. His testimony, as well as the testimony of witness Marijan Malešić, fit into the period between August and October 1994. Malešić stated that once he thought that he would not survive the beatings he received. He testified that the persons who beat them wore black uniforms and he recalls one being named Crni Legija. Josip Sogović corroborated the testimony of this witness, stating that Šemso Jašarević was beaten most often. Witness Josip Sogović also described the beatings that he experienced, testifying that he was beaten by the police and investigators, that "certain individuals come in and beat us", including a group of drunk soldiers. He recalls that a martial artist struck him with a blow causing him to lose consciousness. Furthermore, once when he went to a toilette he was beaten up by a man named Govedarica. He testified that members of the police wore blue uniforms and had accreditations next to their names; as a result, he knew the name of the person who had beaten him in the toilette. It should be noted that Vule Govedarica was a guard in the KPD *Butmir* during the referenced period.⁸¹ but given the fact that this last name is frequently used in the territory of Istočno Sarajevo, the Panel could not establish with certainty that he was the individual who had beaten witness Sogović, particularly given the fact that this witness speaks about a police officer rather than a guard from the prison. A few witnesses, including Halid Aruković, testified that they

⁸¹ Exhibit T-168 (List of employees of the KPD *Butmir* dated 17 March 1995).

were also beaten by the guards. According to Halid Aruković, the worst among the guards was Neđo Pandurović, who enjoyed beating prisoners. Mehmed Agić also testified that the guards beat the detainees.

225. The Panel does not contest that beatings took place during the period relevant to Count 2(c) of the Indictment. However, in order to be able to establish the guilt of the Accused Soniboj Škiljević for these acts, keeping in mind that he was not charged as a direct perpetrator of the referenced mistreatment, the Prosecution needed to have identified the perpetrators of these offenses and establish a *nexus* between the acts of the Accused and those beatings. The Panel concludes that the Prosecution failed to prove that the Accused was aware of these beatings. Were the Panel to convict based solely on the fact that the Accused Škiljević was the warden and thus the superior of the guards in the KPD who committed the beatings, the Panel would be acting in an arbitrary manner and without an evidentiary basis.. This criminal offense must be committed with intent. The Prosecution therefore should have proven beyond a reasonable doubt the intent or knowledge of the Accused, instead of simply alleging his knowledge in the Indictment. More specifically, the Prosecution should have proven that the Accused Škiljević had the necessary *mens rea* to be held responsible for the beatings and other forms of abuse. This conclusion, however, cannot be reached on the basis of the evidence adduced at trial, particularly if it is taken into account that during the evidentiary proceedings the Prosecution failed to identify the perpetrators of the referenced crimes. Moreover, the victims themselves (Josip Sogović, Džemal Arnautović) testified they did not complain to Škiljević of their injuries even when he directly asked them, even though they thought he could have noticed their injuries himself. This, however, represents the subjective views and opinions of the witnesses, and amounts to an insufficient basis on which to base a conclusion beyond a reasonable doubt that Accused Škiljević knew that these prisoners were beaten, and, all the more so, that these beatings were possibly perpetrated by the guards of the KPD who were his subordinates. The Prosecution needed also to prove the type, the extent and the severity of the injuries sustained by the aggrieved parties, had it wished to demonstrate that the beatings and the abuse amounted to torture. This they also failed to do.

226. For these reasons, and based on the dearth of evidence to the contrary, the Panel acquitted the Accused Škiljević of guilt for the acts described under Count 2(c) of the Indictment.

E. COUNTS 1(D) AND (D) OF THE INDICTMENT - ENSLAVEMENT (FORCED LABOR)

227. Events characterized as forced labor were described under Counts 1(d) and 2(d) of the Indictment. Pursuant to the ICTY jurisprudence,⁸² forced labor, taken in combination with other circumstances, may represent “enslavement” as an underlying act of the criminal offense of Crimes against Humanity. Specifically, the presence of “exploitation, forced labor or compulsory work or services” is a “factor to be taken into consideration in determining whether enslavement was committed.”⁸³

228. International humanitarian law does not prohibit all labor by protected persons in armed conflicts.⁸⁴ Generally, the prohibition is against *forced* or *involuntary* labor.⁸⁵

229. In addition, not all types of forced or compulsory labor are *per se* unlawful under international humanitarian law⁸⁶ at the time of armed conflicts or occupation. According to the *Blaškić* Appeals Chamber, the Occupying Power must not compel protected persons to work unless they are over eighteen years of age and meet other conditions defined in the Geneva Conventions. ‘Protected persons’ may not be compelled to undertake any work which would involve them in the obligation to take part in military operations, and in no case shall the requisition of labour lead to a mobilization of workers “in an organization of a military or semi-military character.”⁸⁷ The work of prisoners must not be related to military operations, or have a military character or purpose. However, in order to determine whether taking prisoners to perform forced labor was unlawful, as determined in the Appeals Judgment in the *Blaškić* case, it must be first determined if such taking to forced labor has the character of “cruel treatment” whose prohibition is stipulated under Article 3 of the ICTY Statute and Common Article 3(1) of the Geneva Conventions. In defining the term “cruel treatment”, the Appeals Chamber in the *Blaškić* case accepts the definition thereof from another ICTY case, the *Čelebići*⁸⁸ case, according to which “cruel treatment, as a violation of the laws or customs of war is: a. an intentional act or omission [...] which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity, b) committed against a person

⁸² *Prosecutor v. Simić et al.*, IT-95-9-T, Trial Judgment, 17 October 2003, paras. 85 – 86..

⁸³ *Krnjelac* Trial Judgment, para. 965 citing *Kunarac* Trial Judgment, para. 359.

⁸⁴ *Krnjelac* Trial Judgment, para. 965 citing *Kunarac* Trial Judgment, para. 542.

⁸⁵ *Krnjelac* Trial Judgment, para. 359.

⁸⁶ *Simić et al.*, Trial Judgment para. 88.

⁸⁷ *Blaškić* Appeals Judgment, para 593.

⁸⁸ *Blaškić* Appeals Judgment, para. 595 referring to the *Čelebići* Appeals Judgment, paras. 424-426.

taking no active part in the hostilities. To this end, the Appeals Chamber concludes that the use of persons taking no active part in the hostilities to construct military fortifications....constituted a serious attack on human dignity..., and accordingly any order compelling protected persons to dig trenches or prepare other types of military facilities, particularly when such persons are ordered to do so against their own forces in the armed conflict, constitutes cruel treatment”.

230. The non-Serb civilians detained in pavilion D-2 of the KPD *Butmir* were taken to perform forced labor during the critical period, as confirmed by witness testimony and documentary evidence of the Prosecution and the Defense. Most of the witnesses who testified confirmed that the detainees were taken to perform labor during the period from late July/early August 1992⁸⁹ through mid-December 1995, and that this was a common and regular practice. Only a few witnesses testified that they went to work voluntarily. With respect to the latter, that the Panel notes that their motive for undertaking this “voluntary” work was to get better meals and leave the rooms where they were detained. Thus, their voluntary consent does not diminish the forceful character of the labor, particularly given that the work mostly included digging trenches, communication trenches, bunkers at frontlines, and as such it was forced labor amounting to cruel treatment.

231. Witness Junuz Harbaš⁹⁰ testified that 5-6 days after his detention at the KPD *Butmir* he began performing labor. He testified that, although he never volunteered to go to work, there were detainees who volunteered to work because they would receive better food “even though they would experience all sorts of things”. They were transported to work in military vehicles. The selection procedure involved the persons who would come to take the detainees to perform labor. to arrive with the guards to the room where prisoners were detained and select the detainees who would work. While he was once performing labor at the Zlatište area, this witness was wounded. He was also taken to other locations at the separation lines, like *Famos*, where his life was placed in jeopardy. In addition to the work carried out by the army, there were situations when the detainees were marched to work at the KPD farming economy.

⁸⁹ Taking the detainees to perform forced labour also took place in the earlier period, however given that the KPD *Butmir* did not function under the jurisdiction of the Ministry of Justice during that time, the Panel declined to consider witness statements preceeding the period relevant to the determination of the guilt of the Accused (the period before the KPD *Butmir* resumed functioning).

⁹⁰ He was detained in the KPD *Butmir* between late June/early July 1992 and 16 December 1992.

232. Witness Avdo Pizović⁹¹ testified that he was taken to dig trenches on which occasion nine detainees, including himself, were wounded. On this occasion the following detainees were killed: Vahid Gačanović, Ševal Čamavdić, Hasib Šahović, Ramiz Smajčić and Mehmed Isić. He learned from his relative that Neđo Pandurević took certain detainees to dig holes for power-transmission lines toward Pale.

233. Witness Munib Isić confirms that Vahid Gačanović, Mehmed Isić and Smajjić were killed when they were taken to perform labor. He was also wounded while he performed labor.⁹²

234. Witness Hasan Šunj confirmed the killing of Mehmed Isić, Smajjić and the third detainee whose name he could not remember while they performed labor.⁹³ This witness volunteered to perform labor because in this way he was receiving better food and could eat some fruit.

235. Witness Suno Dupovac⁹⁴ testified that the detainees volunteered to perform labor in order to get better food, but detainees were sometimes wounded and killed. Zido Isić and Ramiz Smajjić were killed by shrapnel at the farming commune, while Vahid Gačanović was killed by a sniper. According to this witness, the guards called-out detainees to go to work, and those selected for work were taken away. Detainees were taken to Grbavica by Željko Glimar. Witness Senaid Stupar⁹⁵ stated that he did not volunteer to go to work, but had heard that there were those who did it in order to get better food. The guards and sometimes even the Accused Lalović and Škiljević handed them over to Željko Glimar, who accompanied by a uniformed soldier drove them, to the location where the work was performed (Grbavica - around the Šoping area and *Željezničar* Stadium, Milinkladanska St., Ozrenska St.). Thereafter, the detainees were handed over to the army. The locations where the detainees performed labor were dangerous, as is evident from the fact that Vahid Gačanović and Ramiz Smajjović were killed, while Nedžad Salihović and Isić were injured.

⁹¹ He was detained in the KPD *Butmir* between 26/27 June and 11 December 1992.

⁹² He was detained in the KPD *Butmir* between 21/22 June 1992 and 8 February 1993.

⁹³ He was detained in the KPD *Butmir* between 24 June and 8 September 1992.

⁹⁴ He was detained in the KPD *Butmir* between 24/25 June 1992 and December 1992.

⁹⁵ He was detained in the KPD *Butmir* between 26 June and 29 August 1992.

236. Witness C,⁹⁶ who was underage when he was detained in Kula, testified that his father was taken to perform labor. The guards would take the detainees out, hand them over to armed persons, and would then transport them to the work-site.

237. Witness Almin Dželilović⁹⁷ was wounded while working in the *Famos* Factory. He was aware that Rešidović was wounded in the Ozrenska St., and that Ramiz Smajić, Muhamed Nizić, Vahid Gačanović and Hasib Šahović were killed while they performed labor.

238. Witness Halid Aruković⁹⁸ testified about the procedure of taking the detainees to perform labor. A guard would point at certain individuals in the detainee room, and would hand them over to the persons who would take them to work. He also confirmed that the labor was performed at locations where their lives were placed at risk; as a result Harbaš was wounded by a sniper and other detainees were killed by one Nebojša.

239. Witness Mehmed Agić⁹⁹ explained that he performed different types of work depending on the location to which he was taken. At the farming economy near Kula and Donji Kotorac he dug trenches. At Vranješ he buried the dead. He cut wood at Mladice and Pavlovac. At the *Famos* Factory he was used as a human shield together with three other detainees. This witness confirmed that detainees who performed labor were placed in life-threatening situations, and that he was wounded once.

240. Witness Džemal Arnautović¹⁰⁰ also described the circumstances of his labor details, stating that no one guaranteed that one would not be killed or wounded inasmuch as detainees were taken to dig trenches and communication trenches at the frontlines. In the morning detainees would be lined up in a corridor, 3-4 armed men would come with trucks and ask the guards to give them “10-15 Baliijas”. The guards would make a list of detainees who would thereupon be driven away by trucks. While they performed labor, the detainees were physically and mentally abused by soldiers.

⁹⁶ He was brought to the KPD *Butmir* in July 1992 and detained for a month.

⁹⁷ He was detained in the KPD *Butmir* between 24 June 1992 and 22 November 1992.

⁹⁸ He was brought to the KPD *Butmir* on 29 November 1992 and detained for 8 months and 10 days (until August 1993).

⁹⁹ He was detained in the KPD *Butmir* between 10 August 1992 and 15 June 1993.

¹⁰⁰ He was brought to the KPD *Butmir* in November 1992 and detained until 9 March 1993.

241. Witness Edin Hidić¹⁰¹ similarly described situations in which detainees were taken to perform labor. He testified that they were called-out by Neđo Pandurević and driven away by military trucks. According to his testimony, detainees could not refuse to work even when their lives were placed in danger as they frequently dug trenches and communication trenches at the frontlines (Dobrinja 4, Igman and Grbavica). He was once exposed to gunfire while clearing the road on the mountain of Igman, etc.

242. Witnesses Izudin Husaković¹⁰², Nusret Kepeš¹⁰³ and others testified that the practice of taking detainees to perform labor continued throughout 1993 and 1994, and that the procedure for selecting detainees and transporting them to perform labor remained unchanged through this period.

243. Witness Izudin Husaković testified that the guards initially had to select which detainees would perform labor, but that eventually enough detainees volunteered to work in order to gain access to better food; eventually the guards stopped picking detainees. This was confirmed by former detainee, Mevlid Hadžić.¹⁰⁴ Husalović also testified that labor was performed during the night while both witnesses testified that detainees were taken to the frontlines to dig trenches and communication trenches, and that witness Hadžić was wounded on one such occasion.

244. Witness Nusret Kepeš testified that he mostly worked at the power-transmission line but that other detained civilians worked in other areas, including at the frontlines. He also noted that a number of detainees were wounded.

245. The witness statements confirm that non-Serb civilians detained in the KPD *Butmir* were taken to perform forced labor amounting to “cruel treatment” and as such, it was unlawful.

246. There was placed on the record ample documentary evidence to confirm that the detained persons were taken to perform labor and exposed to life-threatening situations, as a result of which detainees were killed or wounded as described under Counts 1(d) and 2(d) of the Indictment.

¹⁰¹ The witness does not remember when precisely he was brought to the KPD *Butmir*, but knows it was in December and that was detained there until 20 August 1993.

¹⁰² He was brought to the KPD *Butmir* in December 1992 and detained for 17.5 months.

¹⁰³ He was detained in the KPD *Butmir* between 30 April and 6 October 1994.

¹⁰⁴ He was detained in the KPD *Butmir* between December 1992 and 1 April 1994.

247. Prosecution Exhibits T-55 (Work-site diary for 1993) and T-56 (Work-site list for 1994), which contain the names of the persons heard as witnesses at the main trial, confirm that witnesses were taken to perform labor. From Exhibit T-57 we conclude that accurate records of the number of detainees taken to perform labor were kept in the KPD *Butmir*, and that these records include the locations to which detainees were taken (Farming commune, Grbavica, Zlatište, Vojkovići, the *Slaviša Vajner Čiča* barracks), as well as the identity of non-Serb detainees who were wounded or killed. Furthermore, Exhibit T-58 indicates that non-Serb detainees were taken on a daily basis to perform labor at various locations.

248. The Panel concludes that Vahid Gačanović, Zulfo Vatrić, Mehmed Isić, Ramiz Smajić, Hasib Šahović, Hasan Šabović, Ismet Hidić, Safet Bešić, Denis Ahmić, Suad Hasančević, Senad Hasančević, Izudin Hodžić, Samir Hidić, Mustafa Hurtić, Osmo Škiljan, Salih Hurtić, Rasim Čamdžić, Ševal Čamavdžić, Alen Kure, Šemsudin Smajić, Senji Lajoš, Fadil Osmanović, Kasim Hurtić and Munever Hidić were killed while performing forced labor on the basis of the testimony of witnesses: Junuz Harbaš, Munib Isić, Avdo Pizović, Mušan Šunj, Suno Dupovac, Senaid Stupar, Almin Dželilović, Hasib Dželilović, Hasan Šunj, Edin Hidić, Izudin Husaković, Muhamed Hurtić, Mevlid Hadžić, Halid Aruković, and the documentary Exhibits: T-93 (List of unlawfully detained civilians), T120 (AID survey), T131 (Decision of the Basic Court II in Sarajevo dated 13 September 1994), T-94, T-98, T-100, T-188 (Lists of detained/captured persons), T-97 (List of the Association of Detainees), T-132 (Decision of the Cantonal Court in Sarajevo dated 16 August 2000), T-234 (Official letter of the Federation Commission for Missing Persons), T-93 (List of unlawfully detained persons), T-138 (Excerpt from the Register of Deaths for the Municipality of Hadžići), T-55 (work-site logbook), T-119 (work-site notebook), T-184 (List of detainees), T-223 (Excerpt from the Register of Deaths), 239 (work-site roster for 1993), T-224 (Excerpt from the Register of Deaths), T-66 (KPD *Butmir* duty officer's report for 13/14 June 1993), T-225 (Excerpt from the Register of Deaths), T-235 (Data regarding missing persons of the RS Central commission for the exchange of prisoners and civilians), T-232 (Note of the Commander of the 2nd Company of the Kasindo Battalion), T-66 (KPD *Butmir* duty officer's report for 6 January 1994), T-58 (work-site roster for 1994), O2-35 (Photo-documentation of the CJB dated 10 November 1995).

249. Furthermore, we conclude that Munib Isić, Nusret Šunj, Adem Balić, Nedžad Salihović, Dževad Smajić, Muharem Rešidović, Avdo Pizović, Junuz Harbaš, Mehmed Agić, Almin Dželilović, Husein Hurtić, Jasmin Husaković, Vahidin Hasančević, Hasan Hurtić, Sead-Sejo

Škiljan, Muhamed Hurtić, Omer Hidić, Rifet Husaković, Osman Hurtić, Fadil Šabanović, Vehid Alić, Refik Hodžić, Sadmira Husaković, Mujo Škiljan, Haris Jesenković, Senad Hurtić, Mevlid Hadžić, Zenun Morina, Esad Klačar, Šaćir Čagalj, Nihad Mehmedović, Nedim Alić, Safić Čosić, Rasim Huskić, Ferid Hasančević, Asim Husaković and Rasim Selimović were wounded while they performed forced labor on the basis of the testimony of the witnesses: Mevlid Hadžić, Muhamed Hurtić, Elfid Husaković, Izudin Husaković, Munib Isić, Junuz Harbaš, Senaid Stupar, Almin Đelilović, Avdo Pizović, Mehmed Agić and Halid Aruković, and the documentary Exhibits: T-119 (work-site notebook), T-66 (KPD *Butmir* duty officer's report for 16 May 1993), T-236 (Records of the KPD *Butmir*), T-57 (Number of detainees for December 1993), T-93 (List of detainees), T-120 (AID survey), T-239 (work-site notebook for 1993), T-66 (KPD *Butmir* duty officer's report for 4 November 1993), T-66 (KPD *Butmir* duty officer's report for 6 January 1994), T-66 (KPD *Butmir* duty officer's report for 6 February 1994), T-66 (KPD *Butmir* duty officer's report for 20 August 1993), T-66 (KPD *Butmir* duty officer's report for 4/5 July 1993), T-66 (KPD *Butmir* duty officer's report for 30 May 1993), T-66 (KPD *Butmir* duty officer's report for 18 May 1993), T-66 (KPD *Butmir* duty officer's report for 9 April 1993), T-66 (KPD *Butmir* duty officer's report for 17 April 1993), T-66 (KPD *Butmir* duty officer's report for 4 November 1993), T-66 (KPD *Butmir* duty officer's report for 21 April 1993), T-36 (Discharge letter from the City Hospital dated 21 March 1993), T-57 (Number of detainees for 4 November 1993), T-66 (KPD *Butmir* duty officer's report for 22 May 1993), T-66 (KPD *Butmir* duty officer's report for 25/26 July 1993).

250. On the basis of this evidence, we conclude that the detained non-Serb civilians were taken to perform labor throughout the period relevant to the Indictment. Moreover, the labor had the characteristics of cruel treatment, insofar as the lives of detainees were jeopardized at the frontlines. While some detainees did volunteer to go to work, they did so only to gain access to better meals than they would otherwise receive at the KPD *Butmir*. For this reason, the detainees consciously exposed themselves to the risk of being wounded or deprived of their lives. The Panel notes that Accused Lalović and Škiljević were not charged with the killing or wounding of the persons listed in the Indictment, but that these tribulations were described in order to prove that the forced labor performed by the detainees was dangerous and prohibited.

251. However, even though this Panel finds that it was proved beyond a reasonable doubt that the detained civilians were unlawfully taken to perform forced labor, in order to find the Accused guilty of the acts described under Counts 1(d) and 2(d) of the Indictment the Panel would need to identify

the *nexus* between the Accused and the referenced acts. The Prosecution should have proven that the Accused knew and were responsible for the unlawful taking of the detained civilians to perform such labor and that the Accused could have prevented such a practice and failed to do so.

252. The Panel considers it proven beyond a reasonable doubt that the Accused were aware that the detained civilians were taken to perform labor. Specifically, in their capacities as wardens of the KPD *Butmir*, and based on the fact that both were present in the KPD during the relevant period, and keeping in mind the aforementioned Prosecution Exhibits T-56 through T-58 (KPD records indicating that the detained civilians were taken to perform labor), as well as the Prosecution Exhibits T-206 through T-210, and recalling that the requests to secure persons for performing labor and approvals for doing so were submitted to the management of the KPD *Butmir*, the Panel concludes that the Accused knew that the unlawfully detained civilians were taken to perform labor. Additionally, various witnesses testified that on certain occasions the Accused were present when the detainees were handed over by the guards to the soldiers who took them to perform labor. Witness Mušan Šunj testified that he saw Accused Lalović and Škiljević when he went to perform labor, and that once he even heard the Accused Škiljević telling a person who was escorting them that “there were 10-15 detainees to perform labor”. Witness Suno Dupovac also testified that Lalović and Škiljević were present in the morning hours when the detainees were taken to perform labor, while witness Senaid Stupar stated that the persons who were escorting them spoke with the Accused.

253. The Panel, however, was not convinced that the Accused Lalović and Škiljević approved of the system whereby detainees were taken to perform labor, and that the Accused could have prevented this.

254. Witness Avdo Pizović testified that when detainees complained to Lalović, who had treated them correctly throughout the period of their detention, that the persons who escorted them to perform labor had abused them, he told those individuals that he would not let the detainees be taken to work any more. Recalling, as the Panel discussed earlier, that the group of civilians unlawfully detained in pavilion D-2 of the KPD *Butmir* was not under the jurisdiction of the Accused Lalović and Škiljević, the Panel concludes that the Accused Lalović could not have prevented detainees from being taken to perform labor, but that his protest amounted to mere rhetorical opposition to the fact that detainees were being taken to perform labor. In no way did the

Accused support the system and approve of the acts charged against him under the Prosecution Indictment.

255. The conclusion that the detainees were not under the jurisdiction of the KPD *Butmir* management, including Accused Škiljević, also follows from Exhibit O-2-21, Request of the 1st Romanija Brigade Command and the approval of the Sarajevo-Romanija Corps Command to take detainees to perform labor, on which the Accused Škiljević noted that detainees taken to perform labor were not under his jurisdiction. He affirmed this in his testimony before this Panel.

256. Exhibits T-206 through T-210 confirms that military authorities rather than the KPD *Butmir* management were responsible for granting approvals to detainees to perform labor.

257. Exhibit T-206 confirms that Commander, Lieutenant Colonel Milorad Šehovac signed the Request to take out prisoners of the *Kula* prison to perform labor in the Krtelji area, and that the approval for this was signed by the Commander of the Sarajevo-Romanija Corps, General-Major Stanislav Galić.

258. The Prosecution also tendered as Exhibit T-207 three copies of the requests to take the detainees to perform labor, namely: (1) Request to hand over prisoners to work on fortification, confidential number 2-173 dated 1 February 1993, (2) Request to hand over prisoners to work on fortification, confidential number 2-194 dated 4 February 1993 to complete the work on the fortification of facilities for combat activities and protection, and to extend the referenced engagement because the work was not completed within the planned deadline and to secure additional men power (15-20 detainees) to complete the referenced facilities. These requests were signed by the Commander, Lieutenant Colonel Veljko Stojanović, and approval for the action was given by the Head of OBO SRK, Marko Lugonja. Additionally, the Request to hand over 15 detainees to work in a daily shift, confidential number 2440/93 dated 16 January 1993, was signed by the Commander of the 3rd Battalion, 1st Class Captain Aleksandar R. Petrović, and approved by Colonel Marko Lugonja.

259. Exhibit T-209 reveals that a total of 15 detainees were required to work on the construction of trenches and roads in Donji Kotorac during the 8-16 February 1993 period in order to provide for the needs of the Kasindo Battalion. This request was signed by the Commander, Lieutenant Colonel Veljko Stojanović, and approved by Milorad Bukva.

260. Exhibit T-210 is almost identical to the preceding exhibit; it consists of a request from the Chief of Staff, Major Dušan Savčić, for 15 prisoners to work in the 3rd Infantry Battalion. The request was approved by Colonel Marko Lugonja.

261. It follows from this evidence that the approvals to take the detainees to perform labor were given by members of the military authority, Colonel Marko Lugonja and Milorad Bukva. Based on an examination of the documentary evidence, as well as a review of the testimony of the witnesses, who confirmed that members of the army took them to perform labor whereas the KPD guards took them only as far as the gate and handed them over to the soldiers, and that in some cases it was soldiers who personally selected the detainees, the Panel concludes that the Accused Lalović and Škiljević, as wardens of the KPD *Butmir*, as employees of the Ministry of Justice and representatives of the civilian authorities during a war, lacked the authority to oppose these requests, which had already been approved by the military authorities.

262. The Panel concludes that the Accused Lalović and Škiljević, in their respective capacities as wardens of the KPD *Butmir*, were aware that the detainees were taken to perform labor, but that there is no evidence to show that they approved, consented or contributed to this treatment of the non-Serb detainees. The Prosecution also failed to prove beyond a reasonable doubt that the Accused could have prevented such acts, but failed to do so.

263. For these reasons, and in light of the principle of *in dubio pro reo*, the Panel acquitted the Accused Lalović and Škiljević for acts of enslavement as described under Counts 1(d) and 2 (d) of the Indictment.

IX. DECISION ON THE COSTS OF CRIMINAL PROCEEDINGS

264. Given that the Court rendered an acquittal in this case, it was decided pursuant to Article 189(1) of the CPC of BiH that the costs of the criminal proceedings under Article 185(2) subparagraphs a) through f) of this Code, as well as the necessary expenditures and the remuneration of the defense attorneys will be paid from the budget appropriations of the Court.

X. DECISION ON THE CLAIMS UNDER PROPERTY LAW

265. Pursuant to Article 198(3) of the CPC of BiH, the injured parties are instructed to file their claims under property law in a civil action.

RECORD-TAKER

Nevena Aličehajić

PANEL PRESIDENT

JUDGE

Senadin Begtašević

NOTE ON LEGAL REMEDY: No appeal lies from this Verdict.

XI. ANNEX

A. PROSECUTION EVIDENCE

266. Having considered the consistent proposals of the parties, guided by Article 317(2) of the CPC of BiH, the Appellate Panel determined that it is not necessary to adduce again all the evidence already adduced in the first instance proceedings, both the subjective and objective evidence, and therefore accepted it as such without being read out or reproduced again. Together with the other evidence adduced in these appellate proceedings, all the evidence was considered as an integral evidentiary material and equally evaluated, both individually and in combination.

267. Accepted in this way was the subjective evidence for the Prosecution adduced during the first instance proceedings, namely the testimony of the witnesses:

1. Protected witness A,
2. Protected witness B,
3. Ahmo Fako, Suvad Korjenić,
4. Rešad Brdarić, Salko Zolj,
5. Alisa Muratčauš,
6. Aladin Badžić,
7. Junuz Harbaš,
8. Avdo Pizović,
9. Munib Isić,
10. Hasan Šunj,
11. Mušan Šunj,
12. Suno Dupovac,
13. Delka Jamaković,

14. Senaid Stupar,
15. Protected witness C,
16. Protected witness D,
17. Protected witness E,
18. Almin Dželilović,
19. Hajrudin Karić,
20. Šučro Džihanić,
21. Milenko Tepavčević,
22. Edina Ceribašić-Begović,
23. Vojislav Gojković,
24. Hasib Dželilović,
25. Fadil Vlajčić, Mujo Kalkan,
26. Safet Gagula, Fikret Sirčo,
27. Halid Aruković,
28. Džemal Arnautović,
29. Mehmed Agić,
30. Mevlid Hadžić,
31. Muhamed Hurtić,
32. Nusret Kepeš,
33. Šemso Jašarević,
34. Izudin Husaković,

35. Hazim Hadžihasanović,

36. Mirsad Plećan,

37. Edin Hidić,

38. Josip Sogović,

39. Marijan Malešić,

40. Protected witness F,

41. Almir Garaplija,

42. Azra Zahiragić,

43. Šaban Zahiragić,

44. Goran Bojić,

45. Nezir Huruz, and

46. Miodrag Lalović,

and witness expert, Dr. Hamza Žujo.

268. Furthermore, the Panel admitted the Prosecution documentary evidence adduced during the first instance proceedings, namely:

T1 – BiH Prosecutor’s Office Examination Record No. KT-RZ-33/05 dated 3 July 2007 for Witness A,

T2 – BiH Prosecutor’s Office Examination Record No. KT-RZ-33/05 dated 12 April 2007 for Witness B,

T3 – BiH Prosecutor’s Office Witness Examination Record No. KT-RZ-33/05 dated 19 February 2007 for Ahmo Fako,

T4 – BiH Prosecutor’s Office Witness Examination Record No. KT-RZ-33/05 dated 5 June 2007 for Suvad Korjenić,

T5 – BiH Prosecutor’s Office Witness Examination Record No. KT-RZ- 33/05 dated 5 January 2006 for Rešad Brdarić,

T6 – BiH Prosecutor’s Office Witness Examination Records No. KT-RZ-42/05 and 33/05 dated 22 June 2006 for Salko Zolj,

T7 – BiH Prosecutor’s Office Witness Examination Records No. KT-RZ-42/05 and 33/05 dated 23 February 2006 for Alisa Muratčauš,

T8 – BiH Prosecutor’s Office Witness Examination Record No. KT-RZ-33/05 dated 10 April 2007 for Aladin Badžić,

T9 – BiH Prosecutor’s Office Witness Examination Records No. KT-RZ-42/05 and 33/05 dated 9 March 2006 for Junuz Harbaš,

T10 – BiH Prosecutor’s Office Witness Examination Records No. KT-RZ: 42/05 and KT-RZ: 33/05 dated 10 March 2006 for Avdo Pizović,

T-11 – BiH Prosecutor’s Office Witness Examination Records No. KT-RZ: 42/05 and KT-RZ: 33/05 dated 9 March 2006 for Munib Isić,

T-12 – BiH Prosecutor’s Office Witness Examination Records No. KT-RZ 42/05 and KT-RZ: 33/05 dated 13 April 2006 for Hasan Šunj,

T-13 – BiH Prosecutor’s Office Witness Examination Records No. KT-RZ 42/05 and KT-RZ: 33/05 dated 23 February 2006 for Mušan Šunj,

T-14 – BiH Prosecutor’s Office Witness Examination Record No. KT-RZ-33/05 dated 13 June 2007 for Suno Dupovac,

T-15 – BiH Prosecutor’s Office Witness Examination Record No. KT-RZ-33/05 dated 30 March 2007 for Delka Jamaković,

T-16 – BiH Prosecutor’s Office Examination Record No. KT-RZ-33/05 dated 12 April 2007 for protected witness C – CONFIDENTIAL,

T-17 – BiH Prosecutor’s Office Witness Examination Record No. KT-RZ-33/05 dated 17 December 2008 for Senaid Stupar,

T-18 – BiH Prosecutor’s Office Examination Record No. KT-RZ-33/05 dated 10 April 2007 for protected witness D – CONFIDENTIAL,

T-19 – BiH Prosecutor’s Office Examination Record No. KT-RZ-33/05 dated 12 April 2007 for protected witness E – CONFIDENTIAL,

T20 – Witness Examination Record No. KT-RZ-33/05 dated 15 December 2008 for Almin Dželilović,

T21 – Witness Examination Record No. KT-RZ-42/05 and 33/05 dated 8 February 2006 for Hajrudin Karić,

T22 – Witness Examination Record No. KT-RZ-33/05 dated 20 February 2007 for Šučro Džihanić,

T23 – Witness Examination Record No. KT-RZ-33/05 dated 19 April 2007 for Milenko Tepavčević,

T24 – Document No. 5/92 dated 20 May 1992,

T25 – Document No. 10/92 dated 25 May 1992,

T26 – Witness Examination Record No. KT-RZ-33/05 dated 5 June 2007 for Edina Ceribašić-Begovac,

T27 – Witness Examination Record No. KT-RZ-33/05 dated 2 December 2008 for Vojislav Gojković

T28 – Witness Examination Records No. KT-RZ-42/05 and 33/05 dated 23 February 2006 for Hasib Dželilović,

T29 – Witness Examination Record No. KT-RZ 33/05 dated 10 December 2008 for Fadil Vlajčić,

- T30 – Witness Examination Record No. KT-RZ-33/05 dated 5 June 2007 for Mujo Kalkan,
- T31 – Witness Examination Record No. KT-RZ-33/ dated 26 April 2006 for Safet Gagula,
- T32 – Witness Examination Records No. KT-RZ 42/05, 33/05 and 39/05T33 dated 15 February 2006 for Fikret Sirčo,
- T33 – Witness Examination Record No. KT-RZ-33/05 dated 30 March 2007 for Halid Aruković,
- T34 – Witness Examination Records No. KT-RZ-24/06 and 33/05 dated 26 December 2006 for Džemal Arnautović,
- T35 – Witness Examination Record No. KT-RZ-33/05 dated 19 February 2007 for Mehmed Agić,
- T36 – Discharge letter from the *Sarajevo-Kasindol* City Hospital for witness Mevlid Hadžić,
- T37 – Witness Examination Record No. KT-RZ-33/05 dated 12 June 2007 for Mevlid Hadžić,
- T38 – Witness Examination Record No. KT-RZ-33/05 dated 7 February 2009 for Muhamed Hurtić,
- T39 – Witness Examination Record No. KT-RZ-33/05 dated 12 June 2007 for Nusret Kepeš,
- T40 – Witness Examination Record No. KT-RZ-33/05 dated 7 March 2007 for Šemso Jašarević
- T41 – Witness Examination Record No. KT-RZ-33/05 dated 4 October 2006 for Izudin Husaković
- T42 – Witness Examination Record No. KT-RZ-33/05 dated 20 February 2007 for Hazim Hadžihasanović,
- T43 – Witness Examination Records No. KT-RZ-42/05 and 33/05 dated 15 February 2006 for Mirsad Plećan,
- T44 – Witness Examination Records No. KT-RZ-42/05 and 33/05 dated 8 February 2006 for Edin Hidić,
- T45 – Witness Examination Record No. KT-RZ-33/05 dated 19 February 2007 for Josip Sogović,
- T46 – Witness Examination Record No. KT-RZ-33/05 dated 7 March 2007 for Marijan Malešić,

T47 – Examination Records for Witness F No. KT-RZ-42/05 and 33/05 dated 16 June 2006,

T48 – Witness Examination Record No. KT-RZ-33/05 dated 14 June 2007 for Almir Garaplija,

T49 – Witness Examination Record No. KT-RZ 33/05 dated 13 June 2007 for Azra Zahiragić,

T50 – Witness Examination Record No. KT-RZ 33/05 dated 13 June 2009 for Šaban Zahiragić,

T51 – Witness Examination Records No. KT-RZ-34/06 and KT-RZ-33/05 dated 23 January 2009 for Goran Bojić,

T52 – Witness Examination Records No. KT-RZ-42/05 and 33/05 dated 29 December 2005 for Nezir Huruz,

T53 – List of Croat refugees,

T54 – Guards work schedule (different dates - 91 document),

T55 – List of persons (titled Work-site roster for 1993),

T56 – Work-site list for 1994,

T57 – Number of detainees in the KPD *Butmir* dated 20 April; 21 April; 2 May; 6 May; 4 November; December 1993; 4 January 1994 and 5 January 1994,

T58 – Work-site notebook for 1994,

T59 – List of able-to-work Muslims,

T60 – List of detainees with the indication of the work site location,

T61 – Work-site list,

T62 – Work-site list dated 10 August 1994,

T63 – Detainees schedule per work-site dated 27 September 1994,

T64 – Review of daily allowances and working hours per work-sites for January 1994 and October 1994,

T65 – Receipts dated 22 June 1994; 30 November 1993; 26 November 1993; 19 August 1993 and 31 January 1994,

T66 – Reports of the KPD *Butmir*'s duty officer dated 22/23 March 1993 concluded with 16, 17, 18, 19 April 1995,

T67 – Police Activities Report for May 1994, April 1994 (2x), September 1994, December 1994, November 1994, February 1994, March 1994,

T68 – Witness Examination Record No. KT-RZ-33/05 dated 3 December 2008 for Miodrag Lalović,

T69 – Record on hand-over of DNA samples dated 14 June 2007,

T70 – Autopsy Records (different dates – 38 records),

T71 – Identification Records and Corpses Analysis Reports,

T72 – Finding and Opinion on the Exhumation and Examination – Dr. Hamza Žujo, dated 12 September 2000 and 4 October 2000,

T73 – Finding and Opinion on the Exhumation and Examination – Dr. Hamza Žujo dated 30 June 2000,

T74 – Decision on the Strategic Goals of Serb People dated 26 November 1993,

T75 – Decision dated 1 May 1992,

T76 – Decision on the Establishment of Penal and Correctional Institutions in the Territory of Serb Republic of BiH d 01.05.1992,

T77 – Decision on the Establishment of Penal and Correctional Institutions in the Territory of Serb Republic of BiH dated 12-17 May 1992,

T78 – Excerpt from the Official Gazette No. 5 dated 9 May 1992 with the Law on Ministries,

T79 – Excerpt from the Official Gazette No. 10 dated 30 June 1992 with the Decision establishing the KPD *Butmir*,

T80 – Information of the RS Ministry of Justice dated 22 January 2007 with the Decision dated 16 December 1992 on the appointment of Soniboj Škiljević and the Decision on the appointment of Đorđe Faladžić,

T81 – Certificate of the KPD *Butmir* dated 18 August 1992,

T82 – Certificate of the KPD *Butmir* dated 14 September 1992,

T83 – List of employees in the KPD *Butmir* dated 30 September 1992,

T84 – List of employees of the Ministry of Justice dated 18 May 1992,

T85 – Letter of the Ministry of Justice dated 31 August 1992 with the Recapitulation of in/out payments of funds,

T86 – List of employees of the KPD *Butmir* who received salary for October 1992,

T87 – Official Letter of the KPD *Butmir* dated 17 November 1992,

T88 – Decision of the Ministry of Justice and Administration dated 16 December 1992 on the appointment of Radoje Lalović,

T89 – Decision of the Ministry of Justice and Administration dated 16 December 1992 on the assignment of Radoje Lalović to work obligation,

T90 – Certificate of the R Serbia General Consulate dated 24 February 2006 and the Decision of the MoI Serbia on admission into citizenship of the R Serbia dated 27 June 2006,

T91 – List of persons with work experience in the KPD *Butmir*,

T92 – Certificate of the RS Ministry of Justice dated 3 January 2007,

T93 – List of identified civilians in the *Kula* camp and the *S. V. Čiča* barracks,

T94 – List of detainees in the *Kula* prison,

T95 – List of detainees from 1992,

T96 – List of the BiH Association of Detainees – detainees from the *Kula* camp dated 15 February 2006,

T97 – List of the BiH Association of Detainees – detainees from the *Lukavica-Kula* camp dated 10 April 2006,

T98 – List of the TO R BiH – detained persons,

T99 – List of the Ministry of Justice – detainees in the KPD *Butmir* dated 2 September 1992,

T100 – Lists of detainees – rooms 1, 3, 4, 5 and 6 – Hadžići,

T101 – 2 lists of detainees – room No. 1-7 in the KPD *Butmir* and room No. 5 Pale,

T102 – Letter of the Ministry of Justice dated 23 June 1992,

T103 – Letter of the MoI dated 30 August 1992; Letter dated 8 September 1992; Decision on the exchange of detainees dated 2 December 1992,

T104 – List of the missing persons from the Kasindolska St. dated 29 May 2005,

T105 – Exhumation request dated 17 May 2008,

T106 – Exhumation request dated 17 May 2007,

T107 – Exhumation Order of the Cantonal Court in Sarajevo dated 18 May 2007,

T108 – Exhumation Order dated 22 May 2007,

T109 – Exhumation Record dated 23 May 2007,

T110 – Exhumation Record dated 25 May 2007,

T111 – Official Note dated 25 May 2007,

T112 – Official Note dated 13 June 2007,

T113 – Record on the items hand-over dated 15 June 2007,

T114 – Order of the Cantonal Prosecutor’s Office in Sarajevo dated 20 September 2007,

T115 – Order of the Cantonal Prosecutor’s Office in Sarajevo dated 25 September 2007,
T116 – Order of the Cantonal Prosecutor’s Office in Sarajevo dated 27 September 2007,
T117 – Identification Record dated 24 September 2007,
T118 – Official Note dated 5 October 2007,
T119 – Work-site notebook of the KPD *Butmir* for the September-December 1992 period,
T120 – Survey of the events in the *Kula* camp,
T121 – Decision of the Basic Court II in Sarajevo dated 23 October 1996,
T122 – Decision of the Cantonal Court in Sarajevo dated 27 April 1999,
T123 – Record of the on-site investigation dated 3 May 1999,
T124 – Forensic Finding and Opinion dated 24 March 2000,
T125 – Photo-documentation dated 3 May 1999,
T126 – Official Note dated 24 March 2000,
T127 – Identification Record dated 26 February 2000,
T128 – Excerpt from the Register of Deaths for Izet Ramić dated 3 March 2006,
T129 – Admission list dated 5 May 1992; Burial permit dated 21 May 1999; Burial transit permit dated 24 May 1999; Death certificate dated 21 May 1999,
T130 – Excerpt from the Register of Deaths for Vahid Gačanović dated 6 March 2006,
T131 – Decision of the Basic Court II in Sarajevo dated 13 September 1994,
T132 – Decision of the Cantonal Court in Sarajevo dated 16 August 2000,
T133 – Exhumation Record dated 12 September 2000,
T134 – Report dated 12 September 2000 and Identification Record dated 25 October 2000,

T135 – Photo-documentation dated 25 October 2000,

T136 – Admission list dated 12 September 2000; Burial permit dated 4 October 2000; Burial transit permit dated 7 October 2000,

T137 – Excerpt from the Register of Deaths for Mehmed Isić dated 26 February 2008,

T138 – Excerpt from the Register of Deaths for Ramiz Smajić dated 26 February 2008,

T139 – Letter of the Ministry of Justice dated 3 September 1992,

T140 – List of Muslims,

T141 – Letter of the Ministry of Justice dated 22 September 1992,

T142 – Record dated 10 June 1992,

T143 – Decision dated 9 August 1992,

T144 – Record dated 9 August 1992,

T145 – Record dated 17 November 1992,

T146 – Information dated 22 October 1990,

T147 – Conclusion dated 6 August 1992,

T148 – Letter of the RS Presidency dated 22 September 1992,

T149 – Letter of the Ministry of Justice and Administration dated 22 October 1992,

T150 – 1 CD-Audio-recording of the intercepted conversation between Radivoje Grković and Momčilo Mandić and Transcript of the conversation,

T151 – Decision dated 5 June 1990; Decision and the Law on the Basics of the State Security System from April 1984,

T152 – Request for allocation of funds dated 28 August 1992,

T153 – Order of the RS Ministry of Justice and Administration dated 16 December 1992 and Letter of the Command of Sarajevo - Romanija Corps dated 21 December 1992,

T154 – Order of the Exchange Commission,

T155 – Request of the Ministry of Justice dated 21 November 1992 and Request of the Exchange Commission dated 29 November 1992,

T156 – 1 DVD (CNN video-recording and Transcript of the recording in English, and translation into BSC,

T157 – Report of the Ministry of Justice and Administration dated 16 November 1992,

T158 – Information,

T159 – Report dated 19 November 1992 and translation into BSC,

T160 – Notice dated 4 July 1992,

T161 – List of employees of the KPD *Butmir* dated 28 January 1993,

T162 – Data on the work obligation executors in the KPD *Butmir* dated 14 February 1993,

T163 – Record of the KPD *Butmir* employees dated 12 July 1993,

T164 – Data on the work obligation executors in the KPD *Butmir* dated 22 December 1993,

T165 – List of employees of the KPD *Butmir* dated 18 January 1994,

T166 – List of employees of the KPD *Butmir* dated 26 December 1995,

T167 – Book of Rules on Internal Organization of the KPD *Butmir*; Letter of KPD *Butmir* dated 10 July 1995; Book of Rules on the House Order in the KPD *Kula*,

T168 – List of employees of the KPD *Butmir* dated 17 March 1995,

T169 – Certificate of the KPD *Butmir* dated 20 July 1994,

T170 – Financial Plan of Funds for KPD *Butmir* dated 30 January 1994,

T171 – Letter of the KPD *Butmir* dated 22 January 1993,

T172 – Letter of the KPD *Butmir* dated 24 May 1993,

T173 – Certificate dated 4 January 1994,

T174 – Letter of the KPD *Butmir* dated 13 December 1993,

T175 – Information,

T176 – Request of the RS Ministry of Justice and Administration dated 6 April 1994,

T177 – *Elektro distribucija* Report dated 17 May 1994,

T178 – List of detainees in the *Kula* prison,

T179 – List of prisoners of war

T180 – List of prisoners of war in the KPD *Butmir*

T181 – List of prisoners per rooms,

T182 – List of Muslim prisoners as of 27 August 1993,

T183 – List concluded with No. 81,

T184 – 2 lists of detainees from 1993,

T185 – Notebook 1993/94 with the names of persons; 2 lists of persons,

T186 – List of prisoners of war in the KPD *Kula* – 92 persons,

T187 – List of persons – rooms No. 4 and 5,

T188 – List of persons in room No. 3 – Hadžići; room No. 5 – Pale; room No. 6 – Hadžići and room No. 9,

T189 – List of the *Kula* prison dated 6 February 1993,

T190 – List of Croats,

T191 – List of persons – rooms 1,2,3,4 and 7,

T192 – List of prisoners of war from Rudo,

T193 – List of Muslims in the KPD *Butmir* dated 18 April 1994 and List of Muslims in the KPD *Kula* dated 18 April 1994,

T194 – List of Muslims fit to work – old one, dated 11 July 1994, and List of Muslims fit to work – new one, dated 11 July 1994,

T195 – List of Muslim prisoners of war in the KPD *Butmir* from 1-50; List of persons from 1-70 with 3 more persons added; List of the Central Commission for Exchange dated 13 July 1994; List of the Central Commission for Exchange dated 17 July 1994; List of Muslim conscripts – added in pencil – 1995,

T196 – Letter of the Command of the East Bosnia Corps dated 15 December 1992,

T197 – Certificate of the KPD *Butmir* dated 16 November 1993,

T198 – Letter of the Military Post 7512 dated 27 January 1994,

T199 – Record on hand-over of captured Muslims dated 19 May 1994,

T200 – Record on hand-over of captured Muslims dated 5 October 1994,

T201 – Letter of the I Sarajevo Mechanized Brigade dated 27 November 1994,

T202 – Letter of the I Sarajevo Mechanized Brigade dated 19 May 1995,

T203 – Letter of the Central Commission for Exchange dated 23 March 1994; Letter of the Central Commission for Exchange dated 19 May 1994; Letter of the Central Commission for Exchange dated 4 July 1994; Letter of the Central Commission for Exchange dated 7 July 1994; Letter of the Central Commission for Exchange dated 16 July 1994; Letter of the Central Commission for Exchange dated 16 July 1994; Letter of the Central Commission for Exchange dated 13 August 1994; Letter of the Central Commission for Exchange dated 16 August 1994; Letter of the Central Commission for Exchange dated 17 August 1994; Letter of the Central Commission for Exchange dated 20 September 1994; Letter of the Central Commission for Exchange dated 24 October 1994,

T204 – Letter of the State Commission for Exchange dated 20 November 1995,

T205 – Letter of the State Commission for Exchange dated 28 October 1995

T206 – Request to take prisoners from the *Kula* prison dated 14 January 1993,

T207 – Request of the Command of the I Battalion dated 16 January 1993; Request of MP 7512 dated 1 February 1993; Request of MP 7512 dated 4 February 1993,

T208 – Request of the Command of the I Battalion dated 24 January 1993,

T209 – Request of the Command of the I Battalion dated 2 February 1993 and Request of MP dated 8 February 1993,

T210 – Request for prisoners labor,

T211 – Request of MP 7063 dated 24 May 1993; Request of MP 7050 dated 5 September 1993; Request of MP 7050 dated 3 March 1994,

T212 – Document of the ICRC dated 7 March 1994,

T213 – Decision of the Cantonal Court in Sarajevo dated 14 June 2000,

T214 – Exhumation record dated 27 June 2000,

T215 – Official Note dated 7 July 2000,

T216 – Identification Record dated 5 July 2000,

T217 – Photo-documentation dated 27 June 2000 and Sketch of the crime-scene dated 26 June 2000,

T218 – Admission list dated 27 June 2000; Burial permit dated 5 July 2000; Decision of the Basic Court in Konjic dated 31 July 1995,

T219 – Exhumation record of the Higher Court in Sarajevo dated 24 May 1996,

T220 – Photo-documentation dated 24 December 1996,

T221 – Excerpt from the Register of Deaths for Kasim Hurtić dated 20 June 2007,
T222 – Excerpt from the Register of Deaths for Ismet Hidić dated 14 April 2008,
T223 – Excerpt from the Register of Deaths for Safet Bešić dated 14 April 2008,
T224 – Excerpt from the Register of Deaths for Denis Ahmić dated 14 April 2008,
T225 – Excerpt from the Register of Deaths for Suvad Hasančević dated 14 April 2008,
T226 – Excerpt from the Register of Deaths for Senad Hasančević dated 14 April 2008,
T227 – Excerpt from the Register of Deaths for Samir Hidić dated 14 April 2008,
T228 – Excerpt from the Register of Deaths for Mustafa Hurtić dated 14 April 2008,
T229 – Excerpt from the Register of Deaths for Osmo Škiljan dated 29 February 2008,
T230 – Excerpt from the Register of Deaths for Rasim Čandžić dated 17 April 2008,
T231 – Death certificate dated 30 April 1993,
T232 – Note of the killing of Alen Kure dated 29 September 1994,
T233 – Statement of the security organ of the II Infantry Battalion,
T234 – Document of the Federation Commission for Missing Persons dated 25 June 2007,
T235 – Document of the Commission for Exchange,
T236 – Expenditures list dated 25 February 1994,
T237 – Expenditures list dated 25 February 1994,
T238 – Report on the escape of two prisoners dated 21 May 199,
T239 – Work-site notebook for January-April 1993,
T240 – Work Plan for August 1994 dated 29 July 1994 and Work Plan for October 1994 dated 30 September 1994,

T241 – Document of the ICRC dated 15 October 1994,

T242 – Report by Ilija Sorak dated 23 August 1993,

T243 – Search Order of the Court of BiH, No. X-KRN-05/59 dated 4 November 2008,

T243A – SIPA Record No. 17-04/2-4-04-2-31/08 dated 18 November 2008,

T243B – SIPA Official Report No. 17-04/2-4-04-2-454-23/05 dated 18 November 2008,

T243C – SIPA Certificate on seizure of items No. 17-04/2-4-04-2-33/08 dated 18 November 2008,

T243D – Record of the BiH Prosecutor's Office on opening and examination of seized items dated 4 December 2008,

T244 – Document of the KPD Istočno Sarajevo on the documentation delivery with the attachments No. 08/1.01/017-870/07 dated 16 July 2007,

T245 – Work Book for Vlado Vasiljević No. 928430, registration number 776/75 dated September 1975,

T246 – Work Book for Soniboj Škiljević registration number 3530,

T247 – Document of the Serb Police Station Ilidža dated 20 May 1992 – List of Police employees Kula,

T247A – Document of the SJB Ilidža, Police Station Kula – List of the police reserve force dated 20 May 1992,

T247B – List of the SJB Novi Grad, Police Station *Kula* – reserve police officers dated 9 July 1992,

T247C – List of the SJB Novi Grad, Police Station *Kula* – active police officers dated 3 September 1992,

T247D – List of active police officers, SJB Ilidža, Police Station *Kula* dated 22 September 1992,

T248 – Certificate of the KPZ *Butmir* No. S1 dated 16 November 1992,

T249 – Document of the KPD *Butmir* No. 03-424/98 dated 14 December (year illegible),

T250 – Decision of the Ministry of Defense, Ilidža Department, Kula Section No. 06-80-279/94 dated 18 May 1995.

269. The Prosecution had no new evidentiary proposals in the proceedings before the Panel of the Appellate Division.

B. DEFENSE EVIDENCE

1. Evidence of the Defense for the First-Accused

270. The statements of the witnesses heard in the first instance proceedings upon a proposal of the Defense for the Accused were also accepted in the proceedings before the Panel of the Appellate Division, namely:

1. Witness G,
2. Milenko Todorović,
3. Branko Mandić,
4. Radomir Divljanović,
5. Fadil Kreho,
6. Vladimir Kenjić,
7. Dobroslav Planojević,
8. Ida Kovačević,
9. Ranko Tešanović,
10. Ilija Vučković,
11. Malko Koroman,
12. Ahmo Elezović,
13. Nazif Sarajkić,
14. Latif Adžajlić,

15. Vlado Vasiljević,
16. Fehin Mehmedika,
17. Neđo Kapuran,
18. Momir Pandurević,
19. Ljupko Tešanović,
20. Božidar Radović,
21. Vule Govedarica,
22. Slobodan Trifković,
23. Voja Janjetović,
24. Milimir Gutić,
25. Slobodan Avlijaš,
26. Boro Trapara,
27. Accused Radoje Lalović, and
28. Emin Prndelj.

271. The Panel also accepted the Defense documentary evidence adduced during the first instance proceedings, namely:

O1-1 – Certificate issued to the Security Services Center Sarajevo, Banja Luka, Doboj, Trebinje and Bijeljina dated 6 August 1992,

O1-2 – Copy of the Certificate of MoI RS CJB Sarajevo, SJB Srpsko Sarajevo dated 27 September 2002 in the name of Vule Govedarica,

O1-3 – Copy of the Decision appointing persons to work obligation signed by Soniboj Škiljević dated 17 July 1993 in the name of Vule Govedarica,

O1-4 – Copy of the Decision of the Ministry of Defense dated 28 September 1994 in the name of Vojo Janjetović,

O1-5 – Copy of the Decision appointing persons to work obligation for Milimir Gutić (original is given on-sight, and a copy in the case record),

O1-6 – Decree and Decision appointing persons to work obligation – Official Gazette of Serb People in BiH,

O1-6-2 – List of Official Gazettes of Serb People in BiH No. 8/92 (Decree on the National Defense Organization and Form of Decisions appointing persons to work obligation),

O1-7 – Official Gazette of Serb People in BiH No. 7/92 (last page of the Gazette – Contents),

O1-8 – Details for Izet Ramić from the Clinical Center Istočno Sarajevo,

O1-9 – Certificate confirming that Radoje Lalović is not a member of the SDS, issued by the SDS on 7 December 2009,

O1-10 – Decision establishing penal and correctional institutions dated 1 May 1992,

O1-11 – Decision establishing penal and correctional institutions dated 12 May 1992,

O1-12 – Decision establishing KPZ *Butmir* Ilidža dated 30 June 1992,

O1-13 – Response by the RS Minister of Justice to the question regarding the status of the KPD *Foča* dated 25 July 1992,

O1-14 – Decision establishing KPD *Bijeljina* dated 13 July 1992,

O1-15 – Photo-copy of the Official Gazette RS p. 335 of the Gazette dated 13 June 1992,

O1-16 – Letter of the Commission for Exchange, Ilidža, dated 2 July 1992,

O1-17 – Copy of an excerpt from Official Gazette RS, dated 13 June 1992, Order on the application of law of war,

O1-18 – Letter of the Sarajevo Romanija Corps Command, Security Intelligence Department, dated 21 September 1993, with the ICTY seal,

O1-19 – Copy of the burial transport list, military prison Lukavica, dated 14 January 1994,

O1-20 – Copy of the cover letter of the Command of the 3rd Sarajevo OBP, dated 10 December 1994,

O1-21 – Copy of the document of the 1st Ilidža Brigade, dated 6 March 1993,

O1-22 – Copy of the request for oil supply sent to the RS Government, dated 13 November 1992,

O1-23 – Request for forcible vacation of apartments and other premises, dated 2 October 1992,

O1-24 – Request for allocation of funds, RS Government, dated 28 August 1992 and the Request dated 1 September 1992,

O1-25 – Request of the Sarajevo Light Infantry Brigade Command, confidential, dated 14 January 1993, Request to provide workforce dated 2 February 1994, Request of VP Kula dated 8 February, Request to hire workforce of the 1st Sarajevo Brigade from 1994 and Request of the 3rd Battalion Command dated 16 January 1993,

O1-26 – Document of the 2nd Infantry Battalion Command and copy of the letter of Miodrag Lalović dated 6 September 1994,

O1-27 – List of the Commission for Exchange of Prisoners of War dated 25 June 1992, and Approval to transfer the prisoners of war, RS Government, dated 25 May 1994, and exchange prisoners, RS Government, dated 20 September 1994,

O1-28 – Order of the Ministry of Justice of the RS Government, dated 16 December 1992,

O1-29 – Certificate of the MoI-PS Kula-SJB Ilidža dated 4 June 1992 (also filed by the Defense for the Second-Accused as Exhibit O2-4),

O1-29 – Certificate of the SJB Ilidža, Police Station *Kula* No. 21/92, dated 4 June 1992 O1-30-List of persons present at work for June 1992

O1-30A – List of persons present at work for July 1992

O1-30B – List of persons present at work for August 1992,

- O1-31 – Decision of the Ministry of Justice, No. 01-145/92 dated 28 July 1992,
- O1-32 – Letter of the Ministry of Justice, No. 01-140/92 dated 24 July 1992,
- O1-33 – Document of the Ministry of Justice, 23 July 1992,
- O1-34 – Letter of the II Sarajevo Brigade Command No. 146 dated 16 October 1992,
- O1-35 – Letter of the KPZ Istočno Sarajevo No. 08/1.01/240-205/10 dated 4 March 2010,
- O1-36 – Letter of the KPZ Istočno Sarajevo No. 08/1.01/240-210/10 dated 5 March 2010,

2. Evidence of the Defense for the Second-Accused

- O2-1 – Certificate of the *Veternik* Home for the Children and Youth with Disabilities dated 5 January 2009,
- O2-2 – Certificate of the SDS I. Sarajevo dated 7 December 2009,
- O2-3 – Letter of the MoI RS dated 7 September 2009 and the List of active police officers in the PS Kula-SJB Ilidža, List of employees in the PS Kula dated 20 May 1992, List of the reserve force of the PS Kula-SJB N. Grad dated 3 June 1992, List I, List II for May,
- O2-4 – Certificate of the MoI-PS Kula-SJB Ilidža dated 4 June 1992,
- O2-5 – Letter by SJB N. Grad-PS Kula dated 10 July 1992 and Letter by the SJB N. Grad-PS Kula dated 31 July 1992,
- O2-6 – Obituary list from the *Dnevni avaz* newspapers dated 18 October 2009 – obituary list for killed persons – 37 victims from the Kasindolska Street dated 25 May 1992,
- O2-7 – Letter of the SJB N. Grad No. 10/92 dated 25 May 1992,
- O2-8 – Letter of the N. Grad No. 5/92 dated 20 May 1992,
- O2-10 – Letter No. 242/93-48 dated 12 February 1993,
- O2-11 – Document of the MoI-CSB Sarajevo-Sector SDB No. 538 dated 8 May 1991,
- O2-12 – Letter No. 01-03-927/93 dated 20 September 1993,

O2-13 – Cadastre Plan of the KPD *Butmir* dated 31 January 1996,

O2-14 – Pavilion ground-plan No. 2-3 sheets,

O2-15 – Official Gazette dated 30 June 1992 – Decision on the establishment of the KPD *Butmir* (also tendered as the Prosecution Exhibit T-79),

O2-16 – Official Gazette of the Serb People in the R BiH No. 9 – Instruction for the treatment of prisoners of war (also tendered by the Defense for the First-Accused as Exhibit O-1-15),

O2-17 – Document of the Command of the Sarajevo-Romanija Corps No. 10/74-498 dated 22 October 1992,

O2-18 – Authorization by the MoI-Serb Police Station Hadžići No. 01-2/92 dated 29 July 1992,

O2-19 – Document of the Ministry of Justice of the Serb Republic of BiH dated 30 July 1992,

O2-20 – Document of the MoI of the Serb Republic of BiH No. 10-277/92 dated 30 August 1992; Document of the Ministry of Justice of the Serb Republic of BiH No. 72/92 dated 21 November 1992; Document of the VRS-Commission for Exchange,

O2-21 – Document of the Command of the Sarajevo Corps dated 31 December 1992; Document of the Command of the 1st Romanija Infantry Brigade undated,

O2-22 – Document of the Command of the Sarajevo-Romanija Corps – Intelligence Affairs Department dated 21 September 1993,

O2-23 – Document of the Command of the 1st Romanija Infantry Brigade dated 21 May 1993,

O2-24 – Document of the Command of the 1st Ilidža Infantry Brigade No. 01/2-351/94 dated 15 June 1994,

O2-25 – Document of the 1st Ilidža Infantry Brigade No. 01-95/94 dated 6 March 1994 (also tendered by the Defense for the First-Accused as Exhibit O-1-21),

O2-26 – Working hours schedule in the KPD *Butmir* dated 30 April 1993,

O2-27 – Document of the KPZ *Butmir* No. 01-61/93 dated 28 April 1993,

O2-28 – Document of the Ministry of Justice and Administration-KPZ *Butmir* No. 01-141/93 dated 13 July 1993,

O2-29 – Document of the KPZ *Butmir* No. 01-234-47/92 dated 16 December 1992,

O2-30 – Document of the Ministry of Justice -KPD *Butmir* No. 01-207/92 dated 1 September 1992,

O2-31 – Document of the KPD *Butmir* No. 01-09/93 dated 22 January 1993,

O2-32 – Document dated 7 April 1993,

O2-33 – Document of the KPD *Butmir* No. 01-10/93 dated 22 January 1993,

O2-34 – Document of the 2nd Infantry Battalion No. 09-4/94,

O2-35 – Photo-documentation CJB Sarajevo No. Ku 25A/95 dated 31 May 1995,

O2-36A – Decision appointing to work obligation for Neđo Ljuboja,

O2-36B – Discharge letter from the *Kasindo* Hospital No. 431/93 for Neđo Ljuboja,

O2-36C – Certificate of the KPD *Butmir* No. 01-149/94 dated 30 April 1994 for Neđo Ljuboja,

O2-37 – Discharge letter from the *Kasindo* Hospital No. 456/93 for Mevludin Hadžić,

O2-38A – Certificate No. 01-170/94 dated 16 May 1994,

O2-38B – Certificate No. 01-195/94 dated 6 June 1994,

O2-39 – Document of the Central Commission for the Exchange of Prisoners of War and Civilians No. 01-351/94 dated 17 August 1994,

O2-40 – Document of the Central Commission for the Exchange of Prisoners of War and Civilians dated 13 April 1994 with a list of persons,

O2-41 – Report on the exchange of 8 January 1993, dated 10 January 1993,

O2-42 – Conclusions of the Commission for Exchange, Municipality of Hadžići (at the bottom of the page, no header) – List of persons concluded with No. 45,

O2-43 – Fax message of the Commission for the Exchange of Prisoners of War and Detained Civilians dated 29 June 1992,

O2-44A – Document of the *Kasindo* Hospital No. 04-175/09 dated 16 November 1992 (also tendered by the Defense for the First-Accused as Exhibit-O1-8),

O2-44B – Document of the *Kasindo* Hospital No. 05-28/10 dated 24 February 2010,

O2-44C – Document of the *Kasindo* Hospital No. 04-140/09 dated 24 September 2009,

O2-44D – Document of the *Kasindo* Hospital No. 02-237/09 dated 11 May 2009,

O2-45A – Verdict of the Court of BiH No. X-KR-05/58 dated 18 July 2007,

O2-45B – Verdict of the Court of BiH No. X-KRŽ-05/58 dated 1 September 2009,

O2-46 – Work-site log for 1993 (also tendered by the Prosecution as Exhibit T239),

O2-47 – Work-site list for 1994 (also tendered by the Prosecution as Exhibit T56),

O2-48 – Work-site log for 1994 (also tendered by the Prosecution as Exhibit T58),

O2-49 – List of detainees with the work site location indicated (also tendered by the Prosecution as Exhibit T60),

O2-50 – Information of the RS Ministry of Justice dated 22 January 2007 with the Decision dated 16 December 1992 on the appointment of Soniboj Škiljević, and the Decision on the appointment of Dorđe Faladžić (also tendered by the Prosecution as Exhibit T60),

O2-51 – List of the persons missing from the Kasindolska Street dated 29 May 2005 (also tendered by the Prosecution as Exhibit T104),

O2-52 – Note regarding the killing of Alen Kure dated 29 September 1994 (also tendered by the Prosecution as Exhibit T232),

O2-53 – Decision on the establishment of penal and correctional organizations in the territory of the Serb Republic of BiH dated 1 May 1992 (also tendered by the Prosecution as Exhibit T76 and by the Defense for the First-Accused as Exhibit O1-10),

O2-54 – Decision on the establishment of penal and correctional organizations in the territory of the Serb Republic of BiH dated 12-17 May 1992 (also tendered by the Prosecution as Exhibit T77 and by the Defense for the First-Accused as Exhibit O1-11),

O2-55 – Decision on the establishment of KPZ *Butmir* Ilidža dated 30 June 1992 (also tendered by the Defense for the First-Accused as Exhibit O1-12),

O2-56 – Copy of an excerpt from the RS Official Gazette dated 13 June 1992, Order on the application of the law of war (also tendered by the Defense for the First-Accused as Exhibit O1-17),

O2-57 – Letter of the Command of the Sarajevo-Romanija Corps, Security and Intelligence Affairs Department dated 21 September 1993, with The Hague Tribunal seal (also tendered by the Defense for the First-Accused as Exhibit O1-18),

O2-58 – Photo-copy of the burial transport list, military prison Lukavica dated 14 January 1994 (also tendered by the Defense for the First-Accused as Exhibit O1-19),

O2-59A – Copy of the cover letter of the Command of the 3rd Sarajevo OBP dated 10 December 1994 (also tendered by the Defense for the First-Accused as Exhibit O1-20),

O2-59B – Request of the Sarajevo Light Infantry Brigade, confidential dated 14 January 1993, Request to provide workforce dated 2 February 1994, Request of the Military Post Kula dated 8 February, Request to hire workforce by the 1st Sarajevo Brigade dated 1994 and Request of the Command of the 3rd Battalion dated 16 January 1993 (also tendered by the Defense for the First-Accused as Exhibit O1-25),

O2-60 – Document of the Command of the 2nd Infantry Battalion and copy of the letter of Miodrag Lalović dated 6 September 1994 (also tendered by the Defense for the First-Accused as Exhibit O1-26),

O2-61 – List of the Commission for the Exchange of the Prisoners of War dated 25 June 1992 and the Approval to relocate the prisoners of war of the RS Government dated 25 May 1994 and exchange prisoners, RS Government, dated 20 September 1994 (also tendered by the Defense for the First-Accused as Exhibit O1-27),

O2-62 (O1-28) – Order of the Ministry of Justice of the RS Government dated 16 December 1992 (also tendered by the Defense for the First-Accused as Exhibit O1-28),

O2-63 – CD-T002523-1-B from 24 min through 40 min, and from 18 min through 50 min.

3. Evidence of the Defense for the Second-Accused

272. The Appellate Panel also accepted the evidence of the Defense for the Second-Accused adduced during the first instance proceedings, namely the testimony of the following witnesses:

1. Ranko Tešanović,
 1. Ilija Vučković,
 2. Malko Koroman,
 3. Ahmo Elezović,
 4. Nazif Sarajkić,
 5. Latif Adžajlić,
 6. Vlado Vasiljević,
 7. Fehin Mehmedika,
 8. Neđo Kapuran,
 9. Momir Pandurević,
 10. Ljupko Tešanović,
 11. Božidar Radović,
 12. Vule Govedarica,
 13. Milimir Gutić,
 14. Slobodan Avlijaš,

15. Boro Trapara,
16. Željko Mrdić,
17. Nedeljko Ljuboja,
18. Mladen Prstojević,
19. Neđo Pandurević,
20. Mile Sladoje,
21. Neven Lale,
22. Vid Marčetić,
23. Đorđe Faladžić,
24. Miroslav Stjepanović,
25. Slobodan Škrba,
26. Halid Husaković,
27. Bruno Mrnjavac,
28. Dragan Prizmić,
29. Nisad Sarajkić,
30. Neđo Drašković,
31. Željko Mitrović,
32. Goran Nešković,
33. Slavko Ždrale,
34. Milan Trbojević,
35. Accused Soniboj Škiljević, and

36. Dragomir Bulajić.

273. The documentary evidence of the Defense for the Second-Accused tendered into the case record during the first instance proceedings was also accepted, namely:

O2-1 – Certificate of the *Veternik* Home for the Children and Youth with Disabilities, dated 5 January 2009,

O2-2 – Certificate of the SDS I. Sarajevo dated 7 December 2009,

O2-3 – Letter of the MoI RS dated 7 September 2009 and the List of active police officers in the PS Kula-SJB Ilidža, List of employees in the PS Kula dated 20 May 1992, List of the reserve force of the PS Kula -SJB N. Grad dated 3 June 1992, List I, List II for May,

O2-4 – Certificate of the MoI-PS Kula-SJB Ilidža dated 4 June 1992,

O2-5 – Letter by SJB N. Grad-PS Kula dated 10 July 1992 and Letter by the SJB N. Grad-PS Kula dated 31 July 1992,

O2-6 – Obituary list from the *Dnevni avaz* newspapers dated 18 October 2009 – Obituary list for killed persons – 37 victims from the Kasindolska Street dated 25 May 1992,

O2-7 – Letter of the SJB N. Grad No. 10/92 dated 25 May 1992,

O2-8 – Letter of the N. Grad No. 5/92 dated 20 May 1992,

O2-10 – Letter No. 242/93-48 dated 12 February 1993,

O2-11 – Document of the MoI-CSB Sarajevo-Sector SDB No. 538 dated 8 May 1991,

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O2-13 – Cadastre Plan of the KPD *Butmir* dated 31 January 1996,

O2-14 – Pavilion ground-plan No. 2-3 sheets,

O2-15 – Official Gazette dated 30 June 1992 – Decision on the establishment of the KPD *Butmir* (also tendered as the Prosecution Exhibit T-79),

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O2-25 – Document of the 1st Ilidža Infantry Brigade No. 01-95/94 dated 6 March 1994 (also tendered by the Defense for the First-Accused as Exhibit O-1-21),

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O2-36A – Decision appointing to work obligation for Neđo Ljuboja,

O2-36B – Discharge letter from the *Kasindo* Hospital No. 431/93 for Neđo Ljuboja,

O2-36C – Certificate of the KPD *Butmir* No. 01-149/94 dated 30 April 1994 for Neđo Ljuboja,

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O2-44C – Document of the *Kasindo* Hospital No. 04-140/09 dated 24 September 2009,

O2-44D – Document of the *Kasindo* Hospital No. 02-237/09 dated 11 May 2009,

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O2-54 – Decision on the establishment of penal and correctional organizations in the territory of the Serb Republic of BiH dated 12-17 May 1992 (also tendered by the Prosecution as Exhibit T77 and by the Defense for the First-Accused as Exhibit O1-11),

O2-55 – Decision on the establishment of KPZ *Butmir* Ilidža dated 30 June 1992 (also tendered by the Defense for the First-Accused as Exhibit O1-12),

O2-56 – Copy of an excerpt from the RS Official Gazette dated 13 June 1992, Order on the application of the law of war (also tendered by the Defense for the First-Accused as Exhibit O1-17),

O2-57 – Letter of the Command of the Sarajevo-Romanija Corps, Security and Intelligence Affairs Department dated 21 September 1993, with The Hague Tribunal seal (also tendered by the Defense for the First-Accused as Exhibit O1-18),

O2-58 – Photo-copy of the burial transport list, military prison Lukavica dated 14 January 1994 (also tendered by the Defense for the First-Accused as Exhibit O1-19),

O2-59A – Copy of the cover letter of the Command of the 3rd Sarajevo OBP dated 10 December 1994 (also tendered by the Defense for the First-Accused as Exhibit O1-20),

O2-59B – Request of the Sarajevo Light Infantry Brigade, confidential, dated 14 January 1993, Request to provide workforce dated 2 February 1994, Request of the Military Post Kula dated 8 February, Request to hire workforce by the 1st Sarajevo Brigade dated 1994, and Request of the Command of the 3rd Battalion dated 16 January 1993 (also tendered by the Defense for the First-Accused as Exhibit O1-25),

O2-60 – Document of the Command of the 2nd Infantry Battalion and copy of the letter of Miodrag Lalović dated 6 September 1994 (also tendered by the Defense for the First-Accused as Exhibit O1-26),

O2-61 – List of the Commission for Exchange of the Prisoners of War dated 25 June 1992 and the Approval to relocate the prisoners of war of the RS Government dated 25 May 1994 and exchange prisoners, RS Government, dated 20 September 1994 (also tendered by the Defense for the First-Accused as Exhibit O1-27),

O2-62 (O1-28) – Order of the Ministry of Justice of the RS Government dated 16 December 1992 (also tendered by the Defense for the First-Accused as Exhibit O1-28),

O2-63 – CD-T002523-1-B from 24 min through 40 min, and from 18 min through 50 min.

274. Furthermore, the Panel granted the proposal of the Defense for the Second-Accused to directly examine at the hearing before the Panel of the Appellate Division the witnesses who were already examined during the first instance proceedings, namely:

1. Neđo Pandurević,
2. Vule Govedarica,
3. Božo Radović,
4. Đorđe Faladžić,
5. Miodrag Lalović,
6. Milenko Tepavčević,
7. and new witness Momčilo Mandić.

275. During the proceedings before the Appellate Panel, the Defense also adduced the following documentary evidence:

A-O-1 – Copy of the Book of duty officers,

A-O-2 – Certified copy of the Information of the District Prosecutor's Office Istočno Sarajevo for Neđo Pandurević,

AO-1-3 – Document of the Federation Ministry for War Veterans Issues.

RECORD-TAKER

Nevena Aličehajić

PANEL PRESIDENT

JUDGE

Senadin Begtašević